

**In one sense no reported case can ever be obsolete while the laws and judicial usages of English-speaking countries are what they are: that is, no man can say beforehand that any given case, however antiquated or trifling it may appear itself to be, may not at some time have its use to the modern practitioner or text-writer. Every citation in the books is part of the history of the law and no part of that history can be absolutely insignificant.—(Sir Frederick Pollock, Bart., LL.D., Corpus Professor of Jurisprudence in the University of Oxford.)**

**Accurate knowledge of the present state of the law upon any subject involves necessarily the history of the development of the law upon that subject, which can only be attained by following down the decisions touching upon it. — (Francis M. Scott, Justice, Supreme Court, New York.)**

**The law is the last interpretation of the law given by the last Judge.**

**The enunciation of the most elementary principle of law is frequently met by a demand for "an authority in support of that proposition . . . ." No time spent upon providing oneself with a precedent is ever wasted even though the book may have to be judiciously hidden from view until required —(The Hon'ble Sir Cecil Walsh, Kt., K.C., Ex-Offg., Chief Justice, Allahabad High Court.)**

**The last Judicial Interpretation of the law is the Law on which your case hangs.**

**To correctly appraise a Judicial decision, it is important to know later applications of its rules to varying states of facts by way of extension or qualification. — (S. Shepard, Chief Justice, Court of Appeal, Washington ( U. S. A.))**





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A. I. R. PUBLICATION

**THE**  
**A. I. R. MANUAL**  
**UNREPEALED CENTRAL ACTS**  
( CIVIL AND CRIMINAL )

**2nd Edition**

**VOLUME X**

**LIVE-STOCK IMPORTATION ACT, 1898**

**to**

**POUDH LAWS ACT, 1**



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- (2) Each of the Acts included is brought up to the date mentioned below the title of that Act where such title first occurs.
- (3) The case-law is complete till 31st December, 1960.

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## **PREFACE**

*( Reprinted from First Volume )*

We have great pleasure to place before the public the second edition of the A. I. R. Manual containing all the unrepealed Central Acts of India (of all-India importance), amended up-to-date, together with the case-law relating to each Act.

Since the last edition was published in 1946-1948, vast additions and changes have taken place in the statute law of this country.

Out of the 502 Central Acts included in the first edition, 145 Acts have been repealed, and 236 new Acts have been passed besides 331 repealing and amending Acts, 69 Acts of provincial application and 76 Appropriation Acts. Though the Acts of provincial application and the Appropriation Acts have not been included in this edition, all the amendments have been incorporated and all the 236 new Acts above mentioned have been included in this edition. In addition, there have been 16 Adaptation Orders passed in consequence of Independence and the new Constitution and the adaptations made by all these Adaptation Orders have had to be incorporated.

These figures are by themselves enough to show the importance of this edition to the legal profession as well as to the Courts in India.

The scheme of the publication is given at the beginning of this volume. It will be seen that the main features of the first edition have been retained in this edition. The Preface to the first edition (which is reprinted in volume I) may be read as part of this Preface, in this connection.

In conclusion we wish to place on record our sincere thanks to the following gentlemen for their assistance in bringing out this edition: Messrs. D. W. Chitaley, B.A., LL.B., W. W. Chitaley, B.A., LL.B., V. S. Balkundi, B.A., LL.B., R. G. Dhoble, B.A., LL.B., V. B. Bakhale, M.A., LL.B., D. H. Zadgaonkar, B.A., LL.B., K. S. Bakre, B.Sc., LL.B., D. R. Rajandekar, B.A., LL.B., V. R. Buche, B.A., LL.B., G. M. Jatar, B.A., LL.B., M. Kuppuswami, B.A., B.L., H. G. Pathak, B.A., LL.B., P. A. Bakre, B.A., LL.B., G. B. Shidhaye, B.A., LL.B., Advocate, and J. G. Patankar.

D. V. C.

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### (i) *Relating to Journals and Reports.*

- A.I.R.** 1914 All., Bom., etc. ... All India Reporter, Allahabad, Bombay, etc., sections of the respective years.
- Agra. H.C.R.** ... Agra High Court Reports.
- A. M. L. J.** ... Ajmer-Merwara Law Journal.
- All. or I.L.R.** All. ... Indian Law Reports, Allahabad Series.
- All. L. Jour.** ... Allahabad Law Journal.
- All. W. N.** ... Allahabad Weekly Notes.
- All. W.R.** ... Allahabad Weekly Reporter.
- All E. R.** ... All England Law Reports.
- I. L. R. Andhra (Andh. Pra.)** ... Indian Law Reports, Andhra (Andhra Pradesh) Series.
- Andh. L. T.** ... Andhra Law Times.
- Andhra (or Andh.) W. R.** ... Andhra Weekly Reporter.
- I. L. R. Assam** ... Indian Law Reports, Assam Series.
- Avadh W. N.** ... Avadh (or Oudh) Weekly Notes.
- App. Cas.** ... Law Reports, Appeal Cases (England).
- Beng. L. R.** ... Bengal Law Reports.
- B. L. J. R. or Bihar L. J. R.** ... Bihar Law Journal Reports.
- B. R.** ... Bihar Reports.
- Bom. or I. L. R. Bom.** ... Indian Law Reports, Bombay Series.
- Bom. H. C. R.** ... Bombay High Court Reports.
- Bom. L. R.** ... Bombay Law Reporter.
- Bom. P. J.** ... Bombay Printed Judgments.
- Bur. L. Jour.** ... Burma Law Journal.
- Bur. L. R.** ... Burma Law Reports.
- Bur. L. Tim.** ... Burma Law Times.
- Cal. or I. L. R. Cal.** ... Indian Law Reports, Calcutta Series.
- Cal. L. Jour.** ... Calcutta Law Journal.
- Cal. L. R.** ... Calcutta Law Reports.
- Cal. W. N.** ... Calcutta Weekly Notes.
- Cal. W. N. (D R.)** ... Calcutta Weekly Notes (Dacca Reports).
- C. P. L. R.** ... Central Provinces Law Reports.
- Ch.** ... Law Reports, Chancery (England).
- Cor.** ... Coryton's Reports.
- Cr. or Cri. L. Jour.** ... Criminal Law Journal.
- I. L. R. Cut.** ... Indian Law Reports, Cuttack Series.
- Cut. L. T.** ... Cuttack Law Times.
- E. P. or East Punj.** ... East Punjab.
- I. L. R. E. P. or East Punj.** ... Indian Law Reports, East Punjab Series.
- E. R.** ... English Reports (England).
- F. C. R.** ... Federal Court Reports.
- F. L. J.** ... Federal Law Journal.
- Hay** ... Hay's Reports.
- Him. Pra.** ... Himachal Pradesh.
- Hyd.** ... Hyde's Reports.
- Hyd.** ... Hyderabad.
- I. L. R. Hyd.** ... Indian Law Reports, Hyderabad Series.
- Ind. App.** ... Law Reports, Indian Appeals.
- Ind. Cas.** ... Indian Cases.
- Ind. Jur. (N. s.)** ... Indian Jurist (New Series).
- Ind. Jur. (o. s.)** ... Indian Jurist (Old Series).
- Ind. Rul.** ... Indian Rulings.
- I. T. C.** ... Income Tax Cases.
- I. T. R.** ... Income Tax Reports.
- J. & K.** ... Jammu & Kashmir.
- J. & K. L. R.** ... Jammu & Kashmir Law Reports.
- J. L. R. or Jaipur L. R.** ... Jaipur Law Reports.
- Jab. L. J.** ... Jabalpur Law Journal.
- I. L. R. Kar.** ... Indian Law Reports, Karachi Series.
- I. L. R. Ker. (or Kerala)** ... Indian Law Reports, Kerala Series.
- K. L. T. or Ker. L. T.** ... Kerala Law Times.
- K. B.** ... Law Reports, King's Bench (England).
- Knapp** ... Knapp's Reports.
- Lab. A. C.** ... Labour Appeal Cases.
- Lab. L. J.** ... Labour Law Journal.
- I. L. R. Lah.** ... Indian Law Reports, Lahore Series.
- Lah. L. Jour.** ... Lahore Law Journal.
- Lah. L. T.** ... Lahore Law Times.
- L. J.** ... Law Journal (England).
- L. R.** ... Law Reports (England).
- Law Ed.** ... Lawyers' Edition.
- L. R. A.** ... Law Reporter, Allahabad.
- Low. Bur. Rul. or L. B. R.** ... Lower Burma Rulings.

- Luck. or I. L. R. Luck. ... Indian Law Reports, Lucknow Series.
- Madh. B. or M. B. ... Madhya Bharat.
- I. L. R. Madh. B. ... Indian Law Reports, Madhya Bharat Series.
- Madh. B. L. J. ... Madhya Bharat Law Journal.
- Madh. B. L. R. ... Madhya Bharat Law Reporter.
- I. L. R. Madh. Pra. or M. P. ... Indian Law Reports, Madhya Pradesh Series.
- M. P. C. ... Madhya Pradesh Cases.
- M. P. L. J. ... Madhya Pradesh Law Journal.
- Mad. or I. L. R. Mad. ... Indian Law Reports, Madras Series.
- Mad. H. C. R. ... Madras High Court Reports.
- Mad. L. Jour. ... Madras Law Journal.
- Mad. L. Tim. ... Madras Law Times.
- Mad. L. W. ... Madras Law Weekly.
- Mad. W. N. ... Madras Weekly Notes.
- Marsh ... Marshall's Reports.
- M. L. R. or Marwar L. R. ... Marwar Law Reporter.
- Moo. Ind. App. ... Moore's Indian Appeals.
- Moo. P. C. C. ... Moore's Privy Council Cases.
- Mys. ... Mysore.
- I. L. R. Mys. ... Indian Law Reports, Mysore Series.
- Mys. H. C. R. ... Mysore High Court Reports.
- Mys. L. J. ... Mysore Law Journal.
- I. L. R. Nag. ... Indian Law Reports, Nagpur Series.
- Nag. L. Jour. ... Nagpur Law Journal.
- Nag. L. R. ... Nagpur Law Reports.
- N.-W. P. H. C. R. ... North-West Provinces High Court Reports.
- Oudh Cas. ... Oudh Cases.
- Oudh L. Jour. ... Oudh Law Journal.
- Oudh L. R. ... Oudh Law Reports.
- Oudh S. C. ... Oudh Select Cases.
- Oudh W. N. ... Oudh Weekly Notes.
- Pak. L. R. Lahore ... Pakistan Law Reports, Lahore.
- I. L. R. Patiala ... Indian Law Reports, Patiala Series.
- Pat. or I. L. R. Pat. ... Indian Law Reports, Patna Series.
- Pat. H. C. C. ... Patna High Court Cases.
- Pat. L. Jour. ... Patna Law Journal.
- Pat. L. R. ... Patna Law Reporter.
- Pat. L. Tim. ... Patna Law Times.
- Pat. L. W. ... Patna Law Weekly.
- Pat. W. N. ... Patna Weekly Notes.
- Pepsu L. R. ... Pepsu Law Reports.
- I. L. R. Punj. ... Indian Law Reports, Punjab Series.
- Pun. L. R. ... Punjab Law Reporter.
- Pun. Re. ... Punjab Records.
- Pun. W. R. ... Punjab Weekly Reporter.
- Q. B. ... Law Reports, Queen's Bench (England).
- Raj ... Rajasthan.
- I. L. R. Raj. ... Indian Law Reports, Rajasthan Series.
- R. L. W. or Raj. L. W. ... Rajasthan Law Weekly.
- Rang. or I. L. R. Rang. ... Indian Law Reports, Rangoon Series.
- Rang. L. R. ... Rangoon Law Reports.
- Rat. or Rat. Un. Cr. C. ... Ratanlal's Unreported Criminal Cases.
- R. D. ... Revenue Decisions.
- R. R. ... Revised Reports (England).
- R. S. C. ... Rules of the Supreme Court of England.
- Sar. ... Saraswati's Privy Council Judgments.
- Sau. ... Saurashtra.
- Sau. L. R. ... Saurashtra Law Reporter.
- Shome L. R. ... Shome's Law Reports.
- Sind L. R. ... Sind Law Reporter.
- S. C. A. ... Supreme Court Appeals.
- S. C. C. ... Supreme Court Cases.
- S. C. J. ... Supreme Court Journal.
- S. C. R. ... Supreme Court Reports.
- Suther. ... Sutherland's Privy Council Judgments.
- Suth. W. R. ... Sutherland's Weekly Reporter.
- Times L. R. ... Times Law Reports.
- Trav.-Co. or T. C. ... Travancore-Cochin.
- I. L. R. Trav.-Co. or T. C. ... Indian Law Reports, Travancore-Cochin Series.
- T. C. L. R. or Trav.-Co. L. R. ... Travancore-Cochin Law Reports.
- T. L. J. or Trav. L. J. ... Travancore Law Journal.
- U.P.B.R. ... United Provinces Board of Revenue.
- U. P. L. R. ... United Provinces Law Reports.
- Upp. Bur. Rul. or U. B. R. ... Upper Burma Rulings.
- U. S. ... Supreme Court of the United States Reports.
- Vindh. Pra. or V. P. ... Vindhya Pradesh.
- Weir. ... Weir's Criminal Rulings.
- W. L. R. ... Weekly Law Reports (England).
- W. R. (Eng.) ... Weekly Reporter (England).

## ABBREVIATIONS (*contd.*)

### (ii) *Relating to Adaptation Orders.*

<b>A. C. A. O., 1948</b>	... Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
<b>A. L. O., 1950</b>	... Adaptation of Laws Order, 1950.
<b>1 A. L. O., 1956</b>	... Adaptation of Laws (No. 1) Order, 1956.
<b>2 A. L. O., 1956</b>	... Adaptation of Laws (No. 2) Order, 1956.
<b>3 A. L. O., 1956</b>	... Adaptation of Laws (No. 3) Order, 1956.
<b>4 A. L. O., 1957</b>	... Adaptation of Laws (No. 4) Order, 1957.
<b>5 A. L. O., 1957</b>	... Adaptation of Laws (No. 5) Order, 1957.
<b>Andhra A. L. O., 1953</b>	... Andhra Adaptation of Laws Order, 1958.
<b>An. P. A. L. O., 1957</b>	... Andhra Pradesh Adaptation of Laws Order, 1957.
<b>A. O., 1987</b>	... Government of India (Adaptation of Indian Laws) Order, 1987, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.
<b>A. O. (P), 1987</b>	... The Government of India (Adaptation of Acts of Parliament) Order, 1987.
<b>Bih. A. L. O., 1957</b>	... Bihar Adaptation of Laws Order, 1957.
<b>Bom. A. L. O., 1957</b>	... Central Acts on State and Concurrent Subjects (Bombay Adaptation) Order, 1957.
<b>Fr. Est. A. L. O., 1954</b>	... French Establishments (Application of Laws) Order, 1954.
<b>Kerala A. L. O., 1956</b>	... Kerala Adaptation of Laws Order, 1956.
<b>Kerala A. L. O., 1957</b>	... Kerala Adaptation of Laws (No. 2) Order, 1957.
<b>M. P. A. L. O., 1956</b>	... Madhya Pradesh Adaptation of Laws (State and Concurrent Subjects) Order, 1956.
<b>Madras A. L. O., 1954</b>	... Madras Adaptation of Laws Order, 1954.
<b>Madras A. L. O., 1957</b>	... Madras (Adaptation of Laws) (Central Acts) Order, 1957.

### (iii) *Other Abbreviations.*

<b>A.</b>	Superior A placed above the word or words in a square bracket indicates that the word or words is or are the last in the series of general adaptations directed to be by one or more of the Adaptation Orders published in the Gazette of India from 1937 to 1957.	<b>App.</b>	... Appendix or Appeal
		<b>Appr.</b>	... Approved.
		<b>Art. or A...</b>	Article.
		<b>B. R.</b>	... Board of Revenue.
		<b>C. A.</b>	... Court of Appeal.
		<b>Civ.</b>	... Civil.
		<b>Cl.</b>	... Clause.
		<b>Cons.</b>	... Considered.
		<b>Cr.</b>	... Criminal.
<b>A. C.</b>	Appellate Jurisdiction, Civil.	<b>Cr. L.</b>	... Criminal Letters.
<b>A. Cr.</b>	Appellate Jurisdiction, Criminal.	<b>Cr. Cir.</b>	... Criminal Circulars.
		<b>Disa.</b>	... Dissented.

Dist. ... Distinguished.	O. Cr. ... Original Jurisdiction, Criminal.
D. B. ... Division Bench.	Over. ... Overruled.
E. ... Entry.	P. ... Page.
Expl. ... Explained.	Pr. or P... Para.
F. A. ... First Appeal.	Pt. ... Point.
F. B. ... Full Bench.	P. C. ... Privy Council.
F. C. ... Federal Court.	Pre. ... Preamble.
F. N. ... Foot Note.	R. ... Rule.
Foll. ... Followed.	Ref. ... Referred or Reference.
G. I. ... Government of India.	Rel. on... Relied on.
I. O. ... The India (Adaptation of Existing Indian Laws) Order, 1947.	R. S. C... Rules of Supreme Court.
Illus. ... Illustrations.	Rev. ... Revenue.
J. C. R... Joint Committee Report.	S. ... Section.
Jour. ... Journal.	S. A. ... Second Appeal.
L. ... List.	S. B. ... Special Bench.
L. P. ... Letters Patent.	S. C. ... Supreme Court.
N. ... Note.	S. C. R... Select Committee Report.
No. ... Number.	S. O. R... Statement of Objects and Reasons.
O. ... Order.	S. N. ... Short Notes of Cases.
O. O. ... Original Jurisdiction, Civil.	w.e.f. ... With effect from.
	w.r.e.f....With retrospective effect from.

IN FOOTNOTES.—

('66) means (1866); ('04) means (1904); ('27) means (1927); ('89) (1989).

Full year reference is given prior to 1866, like (1818) and not ('18); (1865) and not ('65) and so on, and to all Foreign cases.

(S) Before the letters 'A. I. R.' indicates that the case is included in the Select Edition of A. I. R. also.

+ Indicates that citation of a different case begins.

## **NOTE**

From volume 7 of the A. I. R. Manual, 2nd Edition, the pages of each volume are numbered separately from 1 onwards, instead of continuously from volume to volume.

## **CORRECTIONS**

### **Vol. II. Civil Procedure Code :**

Page 1778, O. 19, R. 1, Note 5.

(i) In Point (1) *add* the following as footnote remark after the citation ('54) A I R 1954 Nag 260 (263) : I L R (1954) Nag 603 (DB) :—

"[('44) A I R 1944 Nag 161 : I L R (1944) Nag 436 and ('53) A I R 1953 Nag 135, *Overruled*]."

(ii) From Point (2) *delete* the star mark and the last citation i. e. ('53) A I R 1953 Nag 135 (135).

### **Vol. VIII. The Hindu Adoptions and Maintenance Act, 1956 :**

Page 39, Section 19.

In sub-section (2) of section 19 for the words "A legitimate or illegitimate child may claim maintenance" *substitute* the words, brackets and figure "Any obligation under sub-section (1) shall not be enforceable".

### **Vol. IX. Land Acquisition Act, 1894 :**

Page 27.

Take the title of the Act and Preamble with the note thereunder from page 29 *before* "Part I—Preliminary" on page 27.

### **Vol. IX. Limitation Act, 1908 :**

Page 835, Sch. I, Art. 134, Note 17, Pt. (1).

*Add* the following as footnote remark after the citation 1938 Mad 394 (396) [AIR V 25] :—

"[Not followed in 1957 Mad 192 (193) [A I R V 44 C 63]."





**Vol. X. The Merchant Shipping Act, 1958 :**

Page 143 S. 3 (20)—*For the figures "5-7-1930" substitute the words and figures "the 5th day of July, 1930".*

Page 144 S. 3 (37)—*For the figures "10-6-1948" substitute the words and figures "the 10th day of June, 1948".*

Page 149 S. 16 (4)—*For "interval" substitute "intervals".*

Page 151 S. 21 (v)—*For "in any cases" substitute "in any case".*

Page 161 S. 68—*For the words "by any person" substitute the words "by any persons".*

Page 167 S. 85, Proviso—*For the words "had been given" substitute the words "has been given".*

Page 183 S. 135 (4) : last line—*For "certified or extracts" substitute "or certified extracts".*

Page 188 S. 151—*For the words "During pendency of proceedings" substitute the words "During the pendency of proceedings".*

Page 194 S. 174 (2) : lines 4 and 5—*For "removal and providing" substitute "removal and of providing".*

Page 195 S. 175 (2) (b)—*For the words "the position in any ship" substitute the words "the position in any such ship".*

S. 176 (a) *Insert the word "and" at the end of clause (a).*

Page 199, S. 193 (4) : line six—*For "the owner of his agent" substitute "the owner or his agent".*

Page 202 S. 202 (1) (b)—*For "at any part or place" substitute "at any port or place".*

Page 212 S. 241 (2)—*For the words "certificate shall be" substitute the words and letter "certificate A shall be".*

Page 216 S. 256 Proviso—*For "food, and pure water" substitute "food, fuel and pure water".*

Page 218 S. 262 (k)—*For "passenger" substitute "passengers".*

Page 219 S. 266 : last line—*For "respective sexes" substitute "the respective sexes".*

Page 228 S. 288 (2) (h)—*For the words "the meaning of life-boats" substitute the words "the manning of life-boats".*

Page 235 S. 312 (2) (c)—*For the figures "31-12-1906" and "5-7-1930" substitute the words and figures "the 31st day of December, 1906" and "the 5th day of July, 1930" respectively.*

Page 238 S. 320—*Omit the word "the" from the head-line of the section.*



# A. I. R. MANUAL

## UNREPEALED CENTRAL ACTS

(CIVIL & CRIMINAL)

### VOLUME X

#### [THE] LIVE-STOCK IMPORTATION ACT, 1898

(Act IX of 1898)

[The Act printed here is as on 1-8-1960.]

#### CONTENTS

##### SECTIONS

- |   |  |
|---|--|
| 1. Short title and local extent.                | 4. Power for State Government to make rules. |
| 2. Definitions.                                 |  |
| 3. Power to regulate importation of live-stock. | 5. Protection to persons acting under Act.   |

#### STATEMENT OF OBJECTS AND REASONS

"The importation into one of the sea-ports of British India of a cargo of horses from Australia, which proved to be infected with the tick disease—a disease very fatal to cattle and capable of being conveyed by other animals, such as horses, themselves immune from it—led to an examination of the existing legal powers of the Government to prevent the importation of live-stock liable to be affected by infectious or contagious disorders. As these powers were found to be defective, it has been decided, in consultation with the Governments of Madras, Bombay and Bengal, to take the necessary powers. Instead of amending the Indian Ports Act (X of 1859), it is thought preferable to proceed by way of self-contained Act.

character, and empower the Governor-General in Council to regulate, restrict or prohibit the importation into British India by land or sea of any live stock which may be liable to be affected by infectious or contagious disorders. The Bill confers necessary powers on officers of Customs at every port, and enables Local Governments to make rules for detention, inspection, disinfection or destruction of such stock, and for the guidance of officers appointed under the rules.

It is not intended to interfere with the inland trade, except so far as to prevent the removal of live-stock, the importation of which has been prohibited, from one part of British India to another."

The provisions of the Bill are general in

—Gazette of India, 1898, Part V, page 282.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts III of 1951; XLVIII of 1952; XI of 1953; LXII of 1958.
- Adapted by A. O., 1937; A. L. O., 1950.
- Extended by Acts LIX of 1949; XXX of 1950.
- Extended in Punjab by Punj Act V of 1950.
- Repealed in part by Act X of 1914.

#### COGNATE ACTS AND PROVISIONS

1. DOUBINE ACT, V OF 1910.
2. GLANDERS AND FARCY ACT, XIII OF 1899.
3. PENAL CODE, 1860, SECTION 289.
4. RAILWAYS ACT, IX OF 1890, SECTION 54 (3).

**[THE] LIVE-STOCK IMPORTATION ACT, 1898**  
**(ACT IX OF 1898)\***

[12th August, 1898.]

*An Act to make better provision for the regulation of the importation of live-stock.*

WHEREAS it is expedient to make better provision for the regulation of the importation of live-stock which is liable to be affected by infectious or contagious disorders; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind. 1898, Pt. V, p. 282.

It has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), S. 3.

This Act has been extended to the new Provinces and merged states by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States merged in the State of Punjab: See Punjab Act V of 1950, S. 3 [15-4-1950].

### 1. Short title and local extent.

(1) This Act may be called **THE LIVE-STOCK IMPORTATION ACT, 1898.**

\*[(2) It extends to the whole of India <sup>b</sup>[<sup>c</sup> <sup>a</sup> <sup>e</sup>].]

\*[<sup>a</sup>

[a] *Substituted* for the former sub-section, by the Live-Stock Importation (Amendment) Act, 1953 (XL of 1953), S. 2 [16-12-1953]. [b] The words "except the State of Jammu and Kashmir" were *omitted* by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), S. 2 and Sch. [1-11-1956]. [c] The word "and" and sub-sec. (3) were repealed by the Repealing and Amending Act, 1914 (X of 1914).

### 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

(a) the expression "infectious or contagious disorders" includes tick-pest, anthrax, glanders, farcy, scabies and any other disease or disorder which may be specified by the <sup>a</sup>[Central Government] by notification in the <sup>a</sup>[Official Gazette]; and

(b) "live-stock" includes horses, kine, camels, sheep and any other animal which may be specified by the <sup>a</sup>[Central Government] by notification in the <sup>a</sup>[Official Gazette];

\*[(c) "import" means the bringing or taking, by sea, land or air, into the territories to which this Act extends.]

[a] *Inserted* by Live-Stock Importation (Amendment) Act, 1953 (XL of 1953), S. 3 [16-12-1953].

### 3. Power to regulate importation of live-stock.

(1) The <sup>a</sup>[Central Government] may, by notification<sup>a</sup> in the <sup>a</sup>[Official Gazette], regulate, restrict or prohibit, in such manner and to such extent as it may think fit, <sup>b</sup>[the import] into <sup>c</sup>[India] or any specified place therein, of any live-stock which may be liable to be affected by infectious or contagious disorders, and of any fodder, dung, stable-litter, clothing, harness or fittings appertaining to live-stock or that may have been in contact therewith.

(2) A notification under sub-section (1) shall operate as if it had been issued under section 19 of the Sea Customs Act, 1875, and the officers of customs at every port shall have the same powers in respect of any live-stock or thing, with regard to the importation of which such a notification has been issued, and the vessel containing the same, as they have for the time being in respect of any article the importation of which is regulated, restricted or prohibited by the law relating to sea customs and the vessel containing the same; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

[a] The Central Government has prohibited the import into India of equine species of animals including horses, asses and mules of any breed, age or sex from Pakistan, Afgha-

nistan or Goa, by land, air or sea : see S. O. 2776, D/- 9-12-1959 published in Gaz. of Ind., 1959, Pt. II-Sec. 3 (ii), p. 3458. [b] *Substituted* for "the bringing or taking, by sea or land," by the Live-Stock Importation (Amendment) Act, 1953 (XL of 1953), S. 4 [16-12-1953]. [c] *Substituted* for "the territories to which this Act extends," by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXI of 1956), S. 2 and Schedule [1-11-1956].

**Note.**—Next section empowers the State Government to make rules for detention, inspection, disinfection or destruction of imported live-stock and fodder affected by infectious or contagious disorders. That section also empowers the State Government to provide for punishment for the breach of any rule. The punishment may extend to a fine up to one thousand rupees.

#### 4. Power for State Government to make rules.

(1) The <sup>A</sup>[State Government] may, <sup>A</sup>[" \* \* "] make rules<sup>b</sup> for the detention, inspection, disinfection or destruction of imported live-stock, and of fodder, dung, stable-litter, clothing, harness or fittings appertaining to imported live-stock or that may have been in contact therewith, and for regulating the powers and duties of the officers whom it may appoint in this behalf.

(2) In making any rule under this section the <sup>A</sup>[State Government] may direct that a breach thereof shall be punishable with fine which may extend to one thousand rupees.

[a] The words "subject to the control of the Governor-General in Council" were omitted by A. O. 1937. [b] For the Live-Stock (Import) Quarantine Rules, 1944, see (1) Bom. Govt. Gaz., 1944, Pt. IV-A, p. 27. (2) Pt. St. Geo. Gaz., D/- 18-7-1944, Pt. I (R. S.), p. 2. (3) Cal. Gaz., 22-9-1944, Notifn. No. 3711 Vety. (4) 1952 : Trav. Co. Gaz., 12-2-1952, Pt. I, p. 135.

#### 5. Protection to persons acting under Act.

No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

### [THE] LOCAL AUTHORITIES LOANS ACT, 1914

(Act IX of 1914)

[The Act printed here is as on 1-8-1960.]

#### CONTENTS

##### SECTIONS

1. Short title and extent.
2. Definitions.
3. Borrowing powers of local authorities.
4. Power to Government to make rules.
5. Remedy by attachment if loan not repaid.

Attachment not to defeat prior charges legally made.

6. Issue of short term bills.
7. Loans not to be effected except under this Act.
8. Application of Act to loans existing previous to the fifth of September, 1871.
9. *[Repealed.]*

##### SCHEDULE I.

##### SCHEDULE II.—*[Repealed]*

#### STATEMENT OF OBJECTS AND REASONS

"Certain practical difficulties have arisen in the working of the Local Authorities Loans Act, 1879 (XI of 1879), and it is proposed to amend that Act so as—

1. to remove all doubts as to the competency of Port officers to borrow under the Act.
2. to make it clear that in the case of loans raised under section 7 of the Act (i. e. loans raised in the open market) the Government of India can (a) by rule delegate the power of sanction to Local Governments; (b) direct that the un-

expended balances of such loans shall be applied in the reduction of the debt of the local authority concerned, or utilised in carrying out works which the local authority is legally authorised to carry out; (c) by rule delegate to Local Governments, subject to such conditions as the Governor-General in Council may by rule impose the power referred to in the preceding clause.

At the same time it is considered desirable to take this opportunity of consolidating the

existing Acts which relate to loans raised by Local Authorities. Those Acts are as follows :

- (1) The Local Authorities Loan Act of 1879 (XI of 1879) as amended by Act XV of 1885, Act I of 1905 and Act V of 1907. This is the general Act under which local authorities derive their ordinary borrowing powers;
- (2) Local Authorities (Emergency) Loans Act, 1897 (XII of 1897), as amended by Act XI of 1912. This Act extended the scope of the general Act by enabling local authorities to borrow money for certain temporary emergencies, such as famine relief and the prevention of epidemic diseases.
- (3) The Local Authorities Loan Act, 1904 (III of 1904), as amended by Act VIII of 1908, which empowered certain of the more important local authorities in India, (specified in the Schedule to the Act) to raise money by the issue of short-term bills repayable within twelve months. Opportunity was taken to embody in this Act a provision (section 3) enabling local authorities, under certain restrictions, to raise money in order to repay money previously borrowed.

These three Acts, together with their various amending Acts, have been consolidated in the draft Bill, and, if the latter becomes law, will

disappear from the Statute-book. The amendments mentioned in paragraph one above have also been provided for in the following manner :—

*Amendment (1).—*This is covered by substitution of the words "any person" for the words "any body corporate, Municipal Committee, or other persons" in the present definition of local authority as given in section 3 of Act XI of 1870—see clause 2 of the Bill [now S. 2].

*Amendment 2 (a).—*This has been provided for by clause (4) (1) (vii) of the Bill.

*Amendments 2 (b) and (c).—*These have been provided for by clause 4 (1) (xv) of the Bill.

In addition to these amendments, opportunity has been taken to reconcile certain discrepancies and to effect certain simplifications in the existing law which are due to the fact that the Acts now in force have been passed at different times to deal with special circumstances. Apart from this the bill makes no change of principle in the existing law, and, in particular, does not affect the borrowing powers conferred on any local authority by any special enactment."

—Gazette of India, 1914, Part V page 5.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended in its application to

- (a) Bombay by Bom. Act II of 1942;
- (b) Madhya Pradesh by C. P. Act I of 1922;
- (c) Punjab by E. P. Act XVII of 1949;

—Adapted by A. O. 1937, A. C. A. O., 1948; A. L. O., 1950, 2 A. L. O., 1956.

—Extended by Acts LIX of 1949; XXX of 1950;

—Extended in Bombay by Bom. Act IV of 1950;

" in Madhya Pradesh by M. P. Act XII of 1950;

" in Madras by Mad. Act XXXV of 1949;

" in Punjab by Punj. Act V of 1950;

—Repealed in part and amended by Act XXXVIII of 1920;

—Repealed in part by Act XII of 1927.

#### [THE] LOCAL AUTHORITIES LOANS ACT, 1914

(ACT IX OF 1914)\*

[25th February, 1914.]

*An Act to consolidate and amend the law relating to the grant of loans to Local Authorities.*

#### Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the borrowing powers of local authorities; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1914, Pt. V, p. 5, and for Report of Select Committee, see *ibid.*, p. 17.

This Act has been partially extended to Berar by Berar Laws Act, 1941 (IV of 1941).

It has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to States merged in the State of :

Bombay : see Bom. Act IV of 1950, S. 3 [30-3-1950].

Madhya Pradesh : see M. P. Act XII of 1950, S. 3 [3-4-1950].

Madras : see Mad. Act XXXV of 1949, S. 3 [1-1-1950].

Punjab : see Punj. Act V of 1950, S. 3 [15-4-1950].

**1. Short title and extent.**

(1) This Act may be called THE LOCAL AUTHORITIES LOANS ACT, 1914.

\*(2) It extends to the whole of India except \*[the territories which, immediately before the 1st November, 1956, were comprised in Part B States.]\*

[a] Substituted for sub-section (2), by A. L. O., 1950. [b] Substituted for "Part B States," by 2 A. L. O., 1956. Immediately before the 1st November, 1956, the following were the Part B States in India: Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin

**2. Definitions.**

In this Act, "local authority" means any person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area;

"funds", used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority;

"prescribed" means prescribed by rules made under this Act; and

"work" includes a survey, whether incidental to any other work or not.

\*["The Government" or "the appropriate Government" means, in relation to cantonment authorities and in relation to port authorities in major ports, the Central Government, and in relation to other local authorities, the State Government.]

[a] Inserted by A. O., 1937.

**3. Borrowing powers of local authorities.**

(1) A local authority may, subject to the prescribed conditions, borrow on the security of its funds or any portion thereof for any of the following purposes, namely:—

- (i) the carrying out of any works which it is legally authorized to carry out,
- (ii) the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity,
- (iii) the prevention of the outbreak or spread of any dangerous epidemic disease,
- (iv) any measures which may be connected with or ancillary to any purposes specified in clauses (ii) and (iii),
- (v) the repayment of money previously borrowed in accordance with law:

Provided that nothing in clause (v) shall be deemed to empower a local authority to fix a period for the repayment of any money borrowed thereunder which, when the period fixed for the repayment of the money previously borrowed is taken into account, will exceed the maximum period fixed for the repayment of a loan by or under any enactment for the time being in force:

\*[Provided further that, in the case of loans other than loans made by the \*[appropriate Government], no amount exceeding twenty-five lakhs of rupees shall be borrowed unless the terms, including the date of flotation, of such loan have been approved by the \*[appropriate Government].]

**Section 3 — Note 1**

[1] Where a Panchayat Board has borrowed money from the plaintiff for any of the purposes enumerated in S. 3, Local Authorities Loans Act, without the previous sanction of the Local Government as required by the rules framed under the Act, the contract is void but the plaintiff is under S. 65, Contract Act, entitled to restoration of his money and can

be permitted to amend his plaint so as to claim relief under S. 65. Where, however, the purpose for which the loan was borrowed without the previous sanction of the Local Government does not fall under S. 3 the plaintiff is entitled to no equitable relief under S. 65. 1942 Mad 111 (112, 113) [AIR V 29].

- (2) Nothing in this section shall be deemed to authorize any local authority—
- (a) to borrow or spend money for any purpose for which, under the law for the time being in force, it is not authorized to apply its funds, or
- (b) to borrow money by means of the issue of bills or promissory notes payable within any period not exceeding twelve months.

[a] *Inserted* by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I. [b] *Substituted* for "Local Government" by A. O., 1937. [c] *Substituted* for "Governor-General in Council," *ibid.*

#### STATE AMENDMENTS

##### MADHYA PRADESH [OLD]

In sub-section (1) of this section, after clause (v) the following clauses shall be *inserted*, namely:—

- "(vi) the meeting of its establishment charges, in case of temporary unforeseen financial difficulty ;
- (vii) any exceptional expenditure of an urgent and unforeseen character not already provided for in this section;" —C. P. Act, I of 1922, S. 2 [1-3-1923.]

##### PUNJAB

In sub-sec. (1), after clause (v), *insert* the following clause, namely :—

- "(vi) any other purpose which the State Government may declare to be a suitable one for which loans may be taken by Local Authorities generally or by a particular Local Authority." —E. P. Act XVII of 1949, S. 2 [29-10-1949.]

#### 4. Power to Government to make rules.

(1) The <sup>a</sup>[appropriate Government] may make rules<sup>b</sup> consistent with this Act as to—

- (i) the nature of the funds on the security of which money may be borrowed;
- (ii) the works for which money may be borrowed;
- (iii) the manner of making applications for permission to borrow money;
- (iv) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;
- (v) the cases and the forms in which particulars of applications and proceedings, and orders therein, shall be published;
- (vi) the cases in which the <sup>a</sup>[appropriate Government] may make loans  
<sup>c</sup>[\* \* \* \* \*];
- <sup>d</sup>(vii) the cases in which local authorities may take loans from persons other than the <sup>a</sup>[appropriate Government];
- (viii) the manner of recording and enforcing the conditions on which money is to be borrowed;
- (ix) the manner and time of making or raising loans;
- (x) the inspection of any works carried out by means of loans;
- (xi) the instalments, if any, by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;
- (xii) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan;
- (xiii) the attachment of such funds, and the manner of disposing of or collecting them;
- (xiv) the accounts to be kept in respect of loans;
- (xv) the utilization of unexpended balances of loans either in the reduction in any way of the debt of the local authority, or in carrying out any works which that authority is legally authorized to carry out; and the sanction necessary to such utilization;

and as to all other matters incidental to carrying this Act into effect.

•[ \* \* \* \* \* ]



(3) All rules made under this Act shall be published "(• • •)" in the "[Official Gazette]"; and on such publication, shall have effect as if enacted in this Act.

[a] *Substituted* for "Local Government," by A. O., 1937. [b] For rules applying to all local authorities in Union territories and to Cantonment Authorities and port authorities of major ports in the former Part A States, *see* the Local Authorities Loans (Central) Rules, 1937 (Gazette of India, 1937, Pt. I, p. 1902), and for rules applying to other local authorities in the former Part A States, *see* the Local Authorities Loans Rules, 1915 (Gazette of India, 1915, Pt. I, p. 1888.) [c] Certain words were *omitted* by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I. [d] *Substituted* for the original clause, *ibid.* [e] Sub-s. (2) was *omitted*, *ibid.* [f] Certain words were *omitted*, *ibid.*

### 5. Remedy by attachment if loan not repaid.

If any money borrowed in accordance with the provisions of this Act, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the "[appropriate Government]", if itself the lender, may, and, if the "[appropriate Government]" is not the lender, shall, on the application of the lender, attach the funds on the security of which the loan was made. After such attachment, no person, except an officer appointed in this behalf by the "[appropriate Government]", shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interests and costs due in respect thereof and of all expenses caused by the attachment and subsequent proceedings :

#### Attachment not to defeat prior charges legally made.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law ; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of the liability in respect of which such attachment is made.

[a] *Substituted* for "Local Government", by A. O., 1937.

### 6. Issue of short term bills.

(1) Subject to the provisions of section 26 of the Indian Paper Currency Act, 1910<sup>a</sup>, the local authorities mentioned in Schedule I and any other local authority to which the "[appropriate Government]" may, by notification in the "[Official Gazette]", extend the provisions of this section, may, with the previous sanction of the "[appropriate Government]", borrow money by means of the issue of bills or promissory notes payable within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under any law for the time being in force :

Provided that the amount of the bills or promissory notes which may be so issued, shall not exceed, when the amount of the other moneys for the time being borrowed by such local authority is taken into account, the total amount which such local authority is empowered by law to borrow.

(2) The "[appropriate Government]" may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this section.

[a] Now *see* Reserve Bank of India Act, 1934 (II of 1934), S. 31. [b] *Substituted* for "Governor-General in Council", by A. O., 1937.

### 7. Loans not to be effected except under this Act.

Except as provided by or under this Act, no local authority shall, for any purpose, borrow money upon, or otherwise charge, its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void :

Provided that nothing herein contained shall be deemed—

(a) to preclude any local authority from exercising the borrowing powers conferred on it by any special enactment now or hereafter in force; or

- (b) to affect the power conferred on any local authority by any such enactment to charge its funds, by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.

## STATE AMENDMENT

## MAHARASHTRA [Old Bombay]

After clause (b) of the proviso to section 7 *insert* the following namely :—

"or

- (c) to preclude any district local board established under section 4 of the Bombay Local Boards Act, 1923, from receiving an advance from the Government of Bombay equivalent to the amount of the cess, levied under sub-section (1) of section 93 of the said Act, which has not been collected or the collection of which has been suspended under sub-section (2) of the said section 93."

— Bom. Act II of 1942, S. 2 [7-2-1942.]

•[8. Application of Act to loans existing previous to the fifth of September 1871.

The remedy mentioned in section 5 shall be available for the recovery of any money lent by the Secretary of State in Council to any local authority before the fifth day of September, eighteen hundred and seventy-one, and the interest due on such money.]

[a] Substituted for the original section, by A. O. 1937.

9. Repeals. [*Repealed by the Repealing Act, 1927 (XII of 1927), S. 2 and Sch.*]

## SCHEDULE I

(See section 6.)

The Corporation of Calcutta.

The Commissioners for the Port of Calcutta.

\*[ • • • • • ]

The Municipal Corporation of the City of Bombay.

The Trustees of the Port of Bombay.

The Corporation of Madras.

b[ • • • • • ]

c[ • • • • • ]

The Trustees for the Improvement of the City of Bombay.

The Trustees for the Improvement of the City of Calcutta.

[a] The entry relating to the Commissioners for the Port of Chittagong was omitted by A. C. A. O., 1948. [b] The entries relating to the Municipal Committee of Rangoon and the Commissioners for the Port of Rangoon were omitted by A. O., 1937. [c] The entries relating to the Municipality of Karachi and the Trustees of the Port of Karachi were omitted by A. C. A. O., 1948.

SCHEDULE II.— Enactments repealed. [*Repealed by the Repealing Act, 1927 (XII of 1927), S. 2 and Sch.*]

[THE] LOCAL AUTHORITIES PENSIONS AND  
GRATUITIES ACT, 1919

(ACT I of 1919)

[The Act printed here is as on 1-8-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"Provisions already exist in some of the enactments relating to local authorities for the grant of pensions and gratuities to employees who may be wounded and to the families of the employees who may be killed in execution of their duty. But it is not open to a local authority to grant a pension or a gratuity to an employee or to his family when he has been incapacitated or has lost his life in the service of the State. It is proposed to permit any local authority, which so desires, to grant a pension or a gratuity in such a case; and, in order specially to provide for cases where

those who had been in the employ of local authorities proceeded on active service during the Great War, it is proposed that the measure should be applicable in cases of injury, disease or death which have occurred since the 4th August, 1914. The Act will be an enabling Act, the provisions of which can be made applicable by such local authorities as care to avail themselves of it to any case covered by the terms of the Act, the sanction of the Local Government being required in each case."

—*Gazette of India, 1919, Part V, page 18.*

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Act XXXVIII of 1920.
- Adapted by A. O., 1937; A. L. O., 1950; 3 A. L. O., 1956.
- Extended by Acts LIX of 1949; XXX of 1950.
- Extended in Bombay by Bom. Act IV of 1950.
- Extended in Punjab by Punj. Act V of 1950.

## [THE] LOCAL AUTHORITIES PENSIONS AND GRATUITIES ACT, 1919

(ACT I OF 1919)\*

[26th February, 1919.]

*An Act to extend the powers of local authorities in regard to the granting of pensions and gratuities.*

WHEREAS it is expedient to extend the powers of local authorities in regard to the granting of pensions and gratuities;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1919, Pt. V, p. 18.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950.]

It has been extended to the States merged in the State of—

Bombay by Bom. Act IV of 1950, S. 3. [30-3-1950.]

Punjab by Punj. Act V of 1950, S. 3. [15-4-1950.]

## 1. Short title and extent.

(1) This Act may be called THE LOCAL AUTHORITIES PENSIONS AND GRATUITIES ACT, 1919.

\*(2) It extends to the whole of India except <sup>a</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part B States].

[a] Substituted for sub-section (2), by A. L. O., 1950. [b] Substituted for "Part B States" by 3 A. L. O., 1956. Immediately before the 1st November, 1956, the following were the Part B States in India: Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin.

## 2. Definition.

In this Act, "officer" means any person who has undertaken <sup>a</sup>[service under the Government] and who immediately prior to undertaking such service, was paid and employed solely by a local authority and, but for undertaking such service, would in the ordinary course have continued in such employment; <sup>b</sup>[and, the "appropriate Government" means, in relation to cantonment authorities and port authorities in major ports, the Central Government, and in relation to other authorities, the State Government].

[a] The words "the service of Government" were successively amended by A. O., 1937 and A. L. O., 1950. [b] Inserted by A. O., 1937.

### 3. Power to grant extraordinary pensions and gratuities.

Notwithstanding anything contained in any enactment or in any rule made thereunder regulating the powers of local authorities, and without prejudice to any powers conferred by or under any such enactment, a local authority may grant a pension or gratuity to any officer thereof who may, since the 4th day of August, 1914, have been wounded or otherwise incapacitated in "service under the Government", and to the widow or child of any such officer who may have died in consequence of injuries received or illness contracted since the 4th day of August, 1914 in the course of such service.

[a] The words "the service of Government" were successively amended by A. O., 1937 and A. L. O., 1950.

*Note.*—Provisions already exist in some enactments relating to local authorities for the grant of pensions and gratuities in case the officer of the local authority gets killed or incapacitated while in execution of his duty. This Act provides for cases, when the officer gets killed or incapacitated while in the service under the Government. Under this Act a local authority is empowered to grant a pension or gratuity, when an officer is killed or incapacitated while in the service under the Government.

### 4. Provision as to pensions and gratuities.

(1) Such pension or gratuity may be granted in addition to any pension or gratuity payable to the officer or his wife or child, as the case may be, under any general or special orders of <sup>a</sup>[His Majesty in Council] or of <sup>b</sup>[the Central Government or any State Government], but shall not, save with the sanction of the <sup>c</sup>[appropriate Government], exceed the amount of the pension or gratuity to which the officer or his wife or child would have been entitled under any such orders if his employment by the local authority had been service for the same time and on the same pay <sup>d</sup>[under the Government].

(2) Any pension granted under this Act may be made to take effect from such date subsequent to the 4th day of August, 1914, and subject to such conditions as the local authority may think fit.

[a] These words shall stand unmodified, *see* A.L.O., 1950. [b] *Substituted* for "Governor-General in Council," by A.O., 1937. [c] *Substituted* for "Local Government," *ibid*. [d] The words "under Government" were successively amended by A.O., 1937 and A.L.O., 1950.

### 5. Procedure.

Subject to the provisions of this Act, the decision of a local authority to grant a pension or gratuity thereunder shall be made in such manner and shall be subject to such sanction as may be prescribed by any enactment or rule regulating the grant by such local authority of pensions and gratuities:

Provided that in every case the sanction of the <sup>a</sup>[appropriate Government] shall be necessary.

[a] *Substituted* for "Local Government," by A. O., 1937.

## [THE] LOK SAHAYAK SENA ACT, 1956

(ACT LIII of 1956)

[The Act printed here is as on 1-8-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"The object of the scheme envisaged in the Bill is to provide for the constitution of a National Volunteer Force for imparting military training to the members of the public with a view to inculcating among them a sense of discipline, security and self-reliance and interest in national service. Military training will be given in camps, which will be set up at convenient places and, wherever possible, in the vicinity of community projects. All able-bodied male citizens between the ages of 18 and 40 are eligible to join the National Volunteer Force.

The Bill seeks to provide the legal basis for the imparting of training, the establishment of training camps and the exercise of disciplinary control over the trainees while in the camps. Matters of administrative details connected with training, remuneration payable to the trainees, issue of stores and the like will be regulated by means of rules to be framed under the proposed Law."

—Gaz. of Ind., 1955, Extra, Pt. II-Sec. 2, p. 508.

## [THE] LOK SAHAYAK SENA ACT, 1956

(ACT LIII OF 1956)\*

[15th September, 1956.]

*An Act to provide for the constitution of Lok Sahayak Sena for imparting military training to citizens of India.*

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows :

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1955 Extra., Pt. II-Sec. 2, p. 508.

**1. Short title and extent.**

(1) This Act may be called **THE LOK SAHAYAK SENA ACT, 1956**.

(2) It extends to the whole of India.

*Note.* — A person enrolled as a volunteer under the Act, shall not, on the ground only of being a volunteer be liable for military service. But he may be called upon to undergo such training as may be prescribed and while undergoing such training, shall perform such duties as the prescribed authority may order.

**2. Definitions.**

In this Act, unless the context otherwise requires, —

(a) 'camp' means any place established under section 4 as a camp where any body of volunteers is for the time being undergoing training;

(b) 'Force' means the Lok Sahayak Sena constituted under this Act;

(c) 'prescribed' means prescribed by rules made under this Act;

(d) 'superior officer' means any officer, junior commissioned officer, warrant officer or non-commissioned officer, of the regular Army or of the Territorial Army;

(e) 'volunteer' means a person enrolled in the Force under this Act;

(f) all words and expressions used in this Act and not defined but defined in the Army Act, 1950, or in the Territorial Army Act, 1948, shall have the meanings respectively assigned to them in the said Acts.

**3. Constitution of the Lok Sahayak Sena.**

There shall be raised and maintained by the Central Government a force to be designated the Lok Sahayak Sena by the enrolment of volunteers in the manner hereinafter provided.

**4. Establishment of camps.**

The Central Government may establish such number of camps for the purposes of the force as it thinks fit and may close down or re-establish any such camps.

**5. Enrolment.**

Any citizen of India not below the age of eighteen years and not above the age of forty years may offer himself for enrolment as a volunteer and may, satisfies the prescribed conditions, be enrolled in the prescribed manner

by the prescribed authority for such period and subject to such conditions as may be prescribed.

### **6. Duties of volunteers.**

No person shall, on the ground only of being a volunteer be liable for military service, but subject thereto a volunteer may be called upon to undergo such training as may be prescribed, and while undergoing such training shall perform such duties and discharge such obligations as the prescribed authority may, by general or special order, direct.

### **7. Discharge.**

Every volunteer shall be entitled to receive his discharge from the Force on the expiration of the period for which he was enrolled, but may prior to the expiration of that period, be discharged from the Force by such authority and subject to such conditions as may be prescribed.

### **8. Offences and penalties.**

(1) If any volunteer commits any of the following offences, that is to say,—

- (i) without sufficient cause fails to attend at any place when duly required to do so; or
- (ii) while in camp on duty—
  - (a) absents himself from the camp without leave;
  - (b) uses criminal force or uses threatening or insubordinate language to a superior officer or assaults a superior officer;
  - (c) disobeys any lawful command of a superior officer;
  - (d) neglects to obey any standing, general or other orders by the officer commanding the camp;
  - (e) uses criminal force to, or assaults, any volunteer or any person subject to the Army Act, 1950, or the Territorial Army Act, 1948;
  - (f) knowingly does any act which is prejudicial to the maintenance of good order or military discipline in camp;

he shall be punishable summarily by order of the prescribed authority with fine which may extend to fifty rupees or, in default, by being confined to barracks for a term which may extend to seven days.

(2) Any fine imposed by order of the prescribed authority under subsection (1) may, on application made in this behalf by the prescribed authority to a Magistrate having jurisdiction in the place where the volunteer resides or has a place of business, be recovered in accordance with the provisions of the Code of Criminal Procedure, 1895, as if it were a fine imposed by such Magistrate.

### **9. Liability for causing loss of, or damage to, Government property.**

If any volunteer wilfully or negligently causes loss of, or damage to, any property of the Government, the prescribed authority may, after giving him an opportunity of being heard and after making such inquiry into the matter as it thinks fit, make an order requiring him to make good the loss or damage within such time as may be specified in the order or within such further time as may be allowed by the prescribed authority in this behalf, and where the amount thereof as determined by the prescribed authority is not paid within the time allowed, it shall, on application made by the prescribed authority to the Collector of the district in which the volunteer resides or has a place of business, be recovered from him in the same manner as an arrear of land revenue.

### **10. Presumption as to certain documents.**

Where a volunteer is required by or in pursuance of any rule made under this Act to attend at any place, a certificate purporting to be signed by the

prescribed officer stating that the volunteer so required to attend failed to do so in accordance with such requirement shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

### 11. Power to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules\* to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the authorities by which, the manner in which, the period for which, and the conditions subject to which, any person may be enrolled as a volunteer;
- (b) the training, discipline, duties and obligations which a volunteer has to undergo, observe, perform or discharge under this Act;
- (c) the authorities by which, and the conditions subject to which, a volunteer may be discharged;
- (d) the manner in which, and the conditions subject to which, a volunteer may be called out for training or duties;
- (e) the determination of authorities for the purposes of this Act;
- (f) the officers by whom certificates may be signed under section 10; and
- (g) any other matter which under this Act is to be or may be prescribed.

(3) All rules made under this section shall be laid before Parliament for a period of at least thirty days, as soon as may be after they are made, and shall be subject to such modifications as Parliament may make therein during the session in which they are so laid or the session immediately following.

[a] For Lok Sahayak Sena Rules, 1957, see Gaz. of Ind., 1957, Pt. II-Sec. 4, p. 180.

## [THE INDIAN] LUNACY ACT, 1912

### (ACT IV of 1912)

[The Act printed here is as on 1-8-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"The bulk of the Law relating to the custody of lunatics and the management of their estates in India is at present contained in the following Acts:—

- (1) The Lunacy (Supreme Courts) Act, 1858 (Act XXXIV of 1858).
- (2) The Lunacy (District Courts) Act, 1858 (Act XXXV of 1858).
- (3) The Indian Lunatic Asylums Act, 1858 (Act XXXVI of 1858).
- (4) The Military Lunatics Act, 1877 (Act XI of 1877).
- (5) The Indian Lunatic Asylums (Amendment) Act, 1886 (Act XVIII of 1886).
- (6) The Indian Lunatic Asylums (Amendment) Act, 1889 (Act XX of 1889).
- (7) Chapter XXXIV of the Code of Criminal Procedure, 1898.
- (8) Section 13 of the Prisoners Act, 1900.

The first three of these Acts are based in a great measure on the English Lunacy Regulation Act, 1853 (16 and 17 Vict., c. 70), and the English Lunatics Act, 1853 (16 and 17 Vict., c. 96). These English Acts after frequent amendment are now replaced by the Lunacy Act, 1890 (53 Vict., c. 5), as amended by the Lunacy Act, 1891 (54 and 55 Vict., c. 65). It is in the opinion of the Government of India desirable that the law relating to the custody of lunatics in India should be amended and assimilated with the modern English law on the subject, and the present Bill has been prepared to effect this purpose. Opportunity has also been taken to rearrange and

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- 100A. [*Repealed.*]
101. [*Repealed.*]

## SCHEDULE I.—FORMS.

SCHEDULE II.—[*Repealed.*]

consolidate as far as possible the whole law relating to lunatics.

The provisions of section 30 of the Prisoners Act, 1900, and much of Chapter XXXIV of the Code of Criminal Procedure, 1898, cannot be conveniently inserted in any general Lunacy Act, and they have therefore been left untouched. Sub-sections (2) and (3) of section 471 and the whole of section 472 of the Code of Criminal Procedure which merely regulate the places in which criminal lunatics may be confined and prescribe the manner in which such lunatics are to be visited, have, however, been incorporated in the present Bill. . . . The main features of the Bill are noted below.

Chapter II deals with the confinement of lunatics in asylums in reception orders and covers much the same ground as the Lunatic Asylums Act, 1858. In so far as such reception orders can be made otherwise than on petition the law is left practically unchanged.

Sections 4 to 11 and 18 to 20 however make a considerable change in the law. At present the confinement of lunatics in asylums on the application of relatives and friends can be effected as follows:—

- (a) In Presidency-towns by an order under section 7 of the Lunatic Asylums Act, 1858.

(1) after the person whom it is desired to confine has been found to be a lunatic by inquisition, or

(2) accompanied by the medical certificates specified therein;

an order under section 7 of the Lunatic Asylums Act, 1858, can only be made for the confinement of a lunatic in an Asylum in a Presidency-town, and

(b) Outside the Presidency-towns, only by an order of the Civil Court.

Under the present Bill the procedure prescribed by section 7 of the Lunatic Asylums Act, 1858, has been changed, and where application is made for the confinement of a lunatic (not being a lunatic so found on inquisition) in an asylum the application must be made by petition to a Magistrate and a reception order can only be made by him. The distinction between asylums in Presidency-towns and asylums outside such areas has given rise to administrative difficulties and inconveniences and serves no useful purpose. It has therefore been discarded.

It will be observed that under the Bill reception orders on petition can only be made in Presidency-towns, and in this particular the provisions of Act XXXVI of 1858 have been followed. Local Governments can, however, apply the provisions of the law regarding such reception orders to areas outside the Presidency-towns.

The procedure prescribed for the issue of reception orders is based on the English Lunacy Act, 1890. The manner in which medical certificates are to be given and the method of examination are carefully prescribed in the Act, and every care has been taken to prevent the improper confinement of any person in an asylum on a false allegation of lunacy.

Chapter IV is a reproduction with slight

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts XII of 1916, VI of 1922, XI of 1923, XXXII of 1923, XXXIII of 1923, V of 1926, X of 1927, XIV of 1932, XXXV of 1934, III of 1951, LVI of 1959.
- Adapted by A. O. 1937, A. C. A. O., 1948, A. L. O., 1950, 2 A. L. O., 1950.
- Amended in its application to
  - (i) Bombay by Bom. Acts XV of 1930, XV of 1938, VIII of 1954, NCVII of 1958, LVI of 1959;
  - (ii) Madhya Pradesh by M. P. Act XXIII of 1952;
  - (iii) Madras by Mad. Acts XIV of 1938, XV of 1938, XII of 1941;
  - (iv) Punjab by Punj. Act XXXVII of 1956;
  - (v) Saurashtra by Saur. Act XLII of 1953;

verbal changes of the present Lunacy (Supreme Courts) Act, 1858. It is probable that substantial amendments bringing the law and procedure more into accordance with the modern English law may be desirable, but the Government of India do not think it expedient at present to make any change in this part of the Bill until the High Courts concerned have been consulted.

Chapter V deals with lunacy proceedings in District Courts and embodies with slight changes the existing law as contained in Act XXXV of 1858. It may possibly be desirable at a later stage to assimilate as far as possible the procedure in the District Courts to that which may be finally adopted for the High Courts. Doubts have been expressed whether that Act empowers a District Court to issue orders for the detention of a lunatic in an asylum (see *In re Joga Kuar*, H.R. 30 Cal 973). This question has now been set at rest by the provisions of clause 70 (1) which is taken from the English Lunacy Act, 1890.

Chapter IX is new. . . . Special attention may, however, be drawn to clause 94 (now S. 93) which penalises the detention of lunatics in asylums in contravention of the Act and also the detention for payment of lunatics or alleged lunatics in unlicensed institutions. This clause is based on section 115 of the English Act. This clause does not prohibit the detention of lunatics by their relatives or in their own houses. The Government of India are, however, of opinion that in the public interest it is desirable that complete control should be exercised over all private institutions where lunatics are confined for payment."

—Gazette of India, 1911, Part V Page 147.

#### [THE INDIAN] LUNACY ACT, 1912

##### (ACT IV OF 1912)\*

[16th March, 1912.]

*An Act to consolidate and amend the Law relating to Lunacy.*

WHEREAS it is expedient to consolidate and amend the law relating to lunacy; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 147; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 57. This Act except Chapter IV has

#### Preamble — Note 1

[1] Act XXXV of 1858 did not apply to a member of a Hindu Mitakshara family owning

no separate property. (12) 23 Mad L Jour 700 (713) (DB). (Per *Sadasa Aiyar, J.*)

[2] The provisions of the Lunacy Act are

been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (IV of 1936), S. 3 and Sch., and in the Angul District by the Angul Laws Regulation, 1936 (V of 1936), S. 3 and Sch.

This Act has been extended to the new Provinces and the Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950], and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States merged in the State of Madhya Pradesh by M. P. Act XII of 1950, S. 3 [3-4-1950]; Maharashtra and Gujarat by Bom. Act IV of 1950, S. 3 [30-3-1950]; Punjab by Punj. Act V of 1950, S. 3 [15-4-1950].

The Act has been extended to the whole of the United State of Gwalior, Indore and Malwa (Madhya Bharat) by M. B. Act XXV of 1950 and for the purposes of that Act, the Central Act IV of 1912 has been adopted *mutatis mutandis* as the Lunacy Act of the United State. See M. B. Act XXV of 1950, Ss. 2 and 3.

## PART I

### PRELIMINARY

#### CHAPTER I

#### 1. Short title and extent.

(1) This Act may be called THE INDIAN LUNACY ACT, 1912.

\*[(2) It extends to the whole of India <sup>b</sup>[except the State of Jammu and Kashmir].]

[a] *Substituted* for former sub-sec. (2), by A. L. O., 1950. [b] *Substituted* for "except Part B States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951.]

#### STATE AMENDMENTS

##### BOMBAY

By virtue of the provisions contained in Bom. Acts VIII of 1954 and XCIV of 1958, this Act as amended by Bombay Act VIII of 1954 is extended to the whole of the State of Bombay including the transferred territories.— See Bom. Acts VIII of 1954, S. 2 and XCIV of 1958, S. 2.

##### MADHYA PRADESH

This Act as amended by the Indian Lunacy (Madhya Pradesh Amendment) Act, 1952, as was in force in the Mahakoshal region, is extended to and shall be in force in all the other regions of the State of Madhya Pradesh— See M. P. Act XXIII of 1958, S. 2 and Sch., Part A, item 73.

#### 2. Savings.

Nothing contained in Part II shall be deemed to affect the powers of any High Court <sup>a</sup>[\* \* \*] over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

[a] The words "for a Part A State" were *omitted* by 2 A. L. O., 1958.

#### 3. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum <sup>a</sup>[or mental hospital] for lunatics established or licensed <sup>b</sup>[by <sup>a</sup>[the Central Government or any <sup>A</sup>[State] Government]]:

[a] *Inserted* by the Lunacy (Amendment) Act, 1922 (VI of 1922), S. 2. [b] *Substituted* for "by Government", by A. O., 1937. [c] *Substituted* for "any Government in British India", by A. C. A. O., 1948.

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum <sup>a</sup>[together with any other charges specified in this behalf by the <sup>A</sup>[State Government], in exercise of any power conferred upon <sup>b</sup>[it] by this Act]:

[a] *Inserted* by the Lunacy (Amendment) Act, 1922 (VI of 1922), S. 2. [b] *Substituted* for "him", by A. O., 1937.

#### Preamble — Note 1 (*emid.*)

not absolutely exhaustive. 1937 Cal 735 (737) [AIR V 24]: ILR (1938) 1 Cal 180 (DB).

[3] The elaborate procedure laid down by the Legislature under the Act must be strictly followed. 1930 Lah 289 (291) [AIR V 17].

- (3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns :

## STATE AMENDMENT

## UTTAR PRADESH

For the colon occurring at the end ~~substitute~~ a comma and thereafter ~~add~~ the following :

"and includes any other civil Court not being the Court of a Munsif declared in that behalf and for such areas as may be specified by the State Government by notification in the Gazette, or."

—U. P. Act XXIV of 1954, S. 2 and Sch. [50-11-1954].

- (4) "criminal lunatic" means any person for whose <sup>a</sup>[detention] in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, or of section 30 of the Prisoners Act, 1900, <sup>b</sup>or of section 103A of the Indian Army Act, 1911];

[a] *Substituted* for "confinement" by Repealing and Amending Act, 1923 (XI of 1923), S. 2 and Sch. 1. [b] *Inserted* by the Army (Amendment) Act, 1923 (XXXIII of 1923), S. 5. [c] *See now* the Army Act, 1950 (XLVI of 1950), S. 145.

- <sup>a</sup> (4A) "India" means the territory of India excluding the State of Jammu and Kashmir ]

[a] *Inserted* by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

- (5) "lunatic" means an idiot or person of unsound mind :

- (6) "Magistrate" means a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the <sup>a</sup>[State Government] to perform the functions of a Magistrate under this Act :

## STATE AMENDMENT

## MAHARASHTRA

In its application to the whole State of Bombay, for Cl. (6) ~~substitute~~ the following : —

"(6) 'Magistrate' means in Greater Bombay, Presidency Magistrate and elsewhere, a Magistrate of the first class."

— Bom. Acts VIII of 1954, S. 2 and Sch. [10-2-1954] and XCVII of 1958, S. 2 [w. e. f. 1-9-1959].

- (7) "medical officer" means a gazetted <sup>a</sup>[medical officer in the service of the Government], and includes a medical practitioner declared by general

## Section 3 (5) — Note 1

[1] Unsoundness of mind taken by itself was held not sufficient to bring a person within the meaning of the term "lunatic" as defined by the Lunacy Act of 1858, unless it incapacitated him from managing his affairs, nor was a person who was incapable of managing his affairs a lunatic, unless that incapacity was produced by unsoundness of mind. (175) 24 Suth. W. R. 124 (124) (DB) + (106) 4 Cal. L. Jour. 115 (117) (DB) + (73) 20 Suth. W. R. 55 (56) (DB).

[2] Mere weakness of intellect is not unsoundness of mind. (109) 4 Cal. L. Jour. 115 (117, 118) (DB).

[3] The term "unsound mind" comprehends imbecility, whether congenital or arising from old age, as well as lunacy or mental aberration resulting from disease. (83) 7 Bom. 15 (18).

[4] To find a person lunatic, it is not enough to find that he is of undeveloped mind or incapable of managing a large estate, but it must be shown that he is subject to delusions. (105) 2 All. L. Jour. 154 (155, 156) (DB).

[5] No person can have direct experience of the mind of another and the proper test of insanity is conduct. A person might conceiv-

ably have all kinds of mental unsoundness; he might have all kinds of delusions, but if his conduct remains normal, there would be no power under the Lunacy Act to deal with him. 1935 Pat. 423 (424) [AIR V 22] (DB).

[6] In assuming jurisdiction under the Lunacy Act the Court must keep in view the distinction between mere weakness of intellect and "lunacy" as understood in the Act. It is only with lunatics as defined in S. 3 (5) that the Act is concerned. It is therefore the duty of the Court before proceeding further to determine judicially whether the person alleged to be incapable of managing himself or his affairs is really a "lunatic" in this sense. 1930 Lah. 289 (291) [AIR V 17].

[7] Though S. 3 (5) defines "lunatic" as an idiot or a person of unsound mind, the said words have not been defined. Both these terms indicate an abnormal state of mind as distinguished from weakness of mind or senility following old age. A man of weak mental strength cannot be called an idiot or a man of unsound mind. The Act is not intended to protect dull-witted people but only those who suffer from a mental disorder or derangement of the mind. 1957 Andh-Pra. 938 (938, 939) [AIR V 44 C 294]; 11LR (1955) Andh 568 (DB).

or special order of the <sup>A</sup>[State Government] to be a medical officer for the purposes of this Act :

[a] *Substituted* for "medical Officer of Government", by A. O., 1937.

- (8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the <sup>A</sup>[State Government] to be a medical practitioner for the purposes of this Act :
- (9) "prescribed" means prescribed by this Act or by rule made thereunder :
- (10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition :
- (11) "relative" includes any person related by blood, marriage or adoption : and
- (12) "rule" means a rule made under this Act.

<sup>A</sup>[(13) . . . . .]

[a] Clause (13) which had been *inserted* by A. L. O., 1950 was *omitted* by Part B States (Laws) Act, 1951 (III of 1951), S. 5 and Sch. [1-4-1951].

## PART II

### RECEPTION, CARE AND TREATMENT OF LUNATICS

#### CHAPTER II

##### RECEPTION OF LUNATICS

#### 4. Reception of persons in asylum.

(1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98 :

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twentyfour hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

#### OBJECTS AND REASONS

"We have added proviso to clause 4 to permit of a person being received into an asylum as a voluntary boarder without a reception order. We regard this provision as

one which is likely to be of considerable value. It is based on similar provisions in the English and Scotch law."—S. C. R.

#### Section 3 (11) — Note 1

[1] A narrow construction should not be placed upon the term "relative." The brother of the wife is related by marriage to the husband of his sister and is, therefore, a "relative" within S. 3 (11). 1918 Cal 353 (354) [AIR V 5] (DB).

#### Section 4 — Note 1

[1] The Act deals specifically and under separate headings with two branches of proceedings executive and judicial. Any person considering himself aggrieved by an executive

order passed by the District Magistrate may apply under part III for a regular inquisition conducted by a judicial Officer. The result of such inquisition is conclusive and overrides and overrules any order which may have been passed summarily by the executive authority. Under this Act the orders passed by the District Magistrate under Part II are purely executive and cannot form the subject-matter of a revision application to the High Court. 1924 Lah 55 (57, 58) [AIR V 11] : 4 Lah 1 : 24 Cri L Jour 664 (DB).

## STATE AMENDMENTS

## ANDHRA PRADESH

Same as that of Madras.

## MADRAS

In sub-section (1) of section 4 for the words and figures "save as provided by sections 8, 16 and 98," the words, figures and letter "save as provided by sections 8, 16 and 98 of this Act and by section 39-A of the Prisons Act, 1894" shall be substituted.

—Madras Act XIV of 1938, S. 3. [25-10-1938.]

*Reception orders on petition***5. Application for reception order.**

(1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the <sup>A</sup>[State Government] has, by notification\* in the <sup>A</sup>[Official Gazette], declared such area as an area in which reception orders may be made.

(a) For such notification by the Government of—

Assam, *see* Assam Gaz., 1917, Pt. II, p. 1364;

Bengal, *see* Cal. Gaz., 1913, Pt. I, p. 1630;

Bihar and Orissa, *see* B. & O. Gaz., 1913, Pt. II, p. 1392.

Bombay, *see* Local Rules and Orders, 1924, Vol. II, p. 694; and Bom. Govt. Gaz., 15-12-1952, Pt. IV-A, p. 1034 and *ibid*, 31-12-1959 p. 2517.

Madras, *see* Madras Local Rules and Orders, 1923, Vol. I, p. 437.

Manipur, *see* Manipur Gaz., 17-6-1959.

Uttar Pradesh, *see* U. P. Gaz., 1911, Pt. I, p. 496.

## OBJECTS AND REASONS

"We have made two alterations in clause 5 which call for attention. In the first place we have provided that if either of the medical certificates which are filed with a petition is made by a relative, assistant or partner of the lunatic or of the petitioner this fact must be stated in the petition. We have not thought it expedient to follow the English law in absolutely debaring particular relatives of the petitioner from granting medical certificates as we think that such a drastic provision might cause grave inconvenience in this coun-

try . . . . . If, however, the drafters who certify to the insanity of the alleged lunatic are relatives or partners or assistants of the lunatic or the petitioner, this fact will be brought prominently to the notice of the Court in virtue of [s. 5 (2)]. We have further provided that when any petition is made to a Magistrate for a reception order the Magistrate shall be furnished with information of any previous enquiries which have been made in any Court into the sanity of the alleged lunatic and the result (if any) of such enquiries."—S. C. R.

**6. Application by whom to be presented.**

<sup>A</sup>[(1) Subject to the provisions of sub-section (3) the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented.]

(2) <sup>b</sup>[If the petition is not presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition] shall contain a statement of the reasons why it is not so presented.

and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

[Compare : Lunacy Act, 1890 (53 & 54 Vict. C. 5), Sect. 5.]

[a] *Substituted* for the original sub-section, by the Lunacy (Amendment) Act, 1926 (V of 1926), S. 2. [b] *Substituted* for "if the petition is not so presented, it," *ibid.*

### OBJECTS AND REASONS

"Clause 6 of the Bill as it originally stood laid down that no petition should be presented by any person under the age of 21, and in this respect the Bill followed the English law. The law of majority in India, however, differs materially from the English law, and in view

of this we have amended the Bill so as to provide that no person shall file a petition under this section unless he has attained the age of majority as determined by the law to which he is subject."—S.C.R.

### 7. Procedure upon petition for reception order.

(1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

[Compare : Lunacy Act, 1890 (53 & 54 Vict., C. 5), Sect. 6.]

### 8. Detention of alleged lunatic pending inquiry.

Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry.

### 9. Consideration of petition.

The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

### 10. Order.

(1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

#### Section 10 — Note 1

[1] It is the duty of the Magistrate passing a reception order to follow with great care the provisions of the Act and to show the greatest

care in the proceedings. 1936 Sind 156 (157) [AIR V 23] : 29 Sind L R 431 : 37 Cri L Jour 1082 (DB).



(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

### 11. Further provisions as to reception orders on petition.

No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

- (a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and
- (b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

### OBJECTS AND REASONS

"We have amended clause 11 of the Bill so as to make it the duty of a Magistrate to call for reasonable security for the payment of the costs of the maintenance of a lunatic admitted into an asylum on petition, and we have further provided that before any lunatic is sent to an asylum on a reception order

founded on petition the Magistrate must be assured that there is some asylum of which the person in charge is willing to receive the lunatic. We have at the same time reserved full power to the Magistrate to commit dangerous lunatics to asylums without any restriction."—S. C. R.

### \*[11A. Power to appoint substitute for the person upon whose application a reception order has been made.

(1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last-mentioned person shall be construed accordingly :

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date or any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution :

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order.

#### Section 11 — Note 1

[1] Person seeking to be manager of estate of lunatic cannot rely on order under Ss. 11 and 11A—Such person must follow procedure laid down for obtaining such order. 1955 NUC (Mad) 3889 [AIR V 42].

#### Section 11A — Note 1

[1] Person seeking to be manager of estate of lunatic cannot rely on order under Ss. 11 and 11A—See Lunacy Act (1912), S. 11. 1955 NUC (Mad) 3889 [AIR V 42].

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the lunatic, unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.]

[a] *Inserted* by the Lunacy (Amendment) Act, 1926 (V of 1926), S. 3.

**\*[11B.] Reception order in case of lunatics from foreign States in India.**

(1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in <sup>b</sup>[India], the <sup>a</sup>[Central Government] may, by notification in the <sup>a</sup>[Official Gazette], direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the <sup>a</sup>[State] or <sup>a</sup>[States] within which such reception orders may be made.

(2) On publication of a notification under sub-section (1), the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely:—

(a) an application for a reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the <sup>a</sup>[State Government] in this behalf;

(b) the functions of the Magistrate shall be performed by such officer as the <sup>a</sup>[State Government] may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions;

(c) for the purposes of sections 5 and 18 (1), the expressions “medical officer” and “medical practitioner” shall include such person or class of persons as the <sup>a</sup>[State Government] may specify in this behalf;

(d) the Magistrate may in his discretion extend the period prescribed by section 19 within which the alleged lunatic must have been medically examined; and

(e) sections 6 (1), (2), (3), 11, <sup>c</sup>[11A] and 34 of the Act, shall not apply, and with such other modifications, restrictions or adaptations as the <sup>a</sup>[Central Government] may, by notification in the <sup>a</sup>[Official Gazette], direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order made under section 7 or section 10, as the case may be.

[a] This section was originally *inserted* as S. 11-A by the Lunacy (Amendment) Act, 1916 (XII of 1916), and was re-numbered as S. 11-B, *ibid.*, 1926 (V of 1926), S. 3. [b] *Substituted* for, “the States”, by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule [1-4-1951]. [c] *Inserted* by Act V of 1926, S. 4.

*Reception orders otherwise than on petition*

**12. Reception order in case of a European lunatic soldier, sailor or airman.**

When any European who is subject to the provisions of the <sup>a</sup>Army Act, <sup>b</sup>[the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, <sup>bb</sup> 1934], <sup>cc</sup>[the Air Force Act or the Indian Air Force Act, <sup>c</sup> 1932] has been

declared a lunatic in accordance with the provisions of the military, <sup>b</sup>[naval] <sup>d</sup>[or air force] regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorised<sup>e</sup> for the purpose by the <sup>A</sup>[Central Government.]

[a] 44 & 45 Vict., c. 58. [b] *Inserted* by the Amending Act, 1934 (XXXV of 1934), S. 2 and Sch. [bb] Now repealed by the Navy Act, 1957 (LXII of 1957), S. 180. [c] Now see the Air Force Act, 1950 (XLV of 1950). [cc] *Substituted* for "or the Air Force Act" by the Air Force Act, 1932 (XIV of 1932), S. 130 and Sch. See now the Army and Air Force (Disposal of Private Property) Act, 1950 (XI of 1950), and the Air Force Act, 1950 (XLV of 1950). [d] *Inserted* by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I. [e] For notifications under this section, see General Statutory Rules and Orders, Vol. IV, pp. 342-343.

### 13. Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.

(1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

#### OBJECTS AND REASONS

"We have amended clause 13 so as to give the Police should be bound to arrest such the police discretionary power as to the arrest lunatics in all cases."

—S. C. R.

### 14. Reception order in case of wandering and dangerous lunatics.

Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum:

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order

#### Section 13 — Note 1

[1] There is no law which authorizes the police or a Magistrate in the exercise of police duties, or an officer in command of a cantonment, in consequence of a *bona fide* belief that a person is dangerous by reason of actual lunacy, to put him into confinement in order that he may be visited and examined by medical officers, and to keep him in confinement until such officers can feel themselves justified in reporting whether the person is a dangerous lunatic or not; *a fortiori* this can-

not be done in the case of a *bona fide* belief of danger from impending lunacy. (83) 9 Cal 341 (354); 9 Ind App 152 (PC).

#### Section 14 — Note 1

[1] Where S. 14 applies to a case by reason of S. 15 (3) the two provisos of S. 14 also apply if the facts are such as to attract their application. 1936 Sind 156 (157) [AIR V 23]; 29 Sind L R 431; 37 Cri L Jour 1082 (DB).

for the admission of the lunatic into the licensed asylum mentioned in the engagement :

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

### OBJECTS AND REASONS

"Clause 14 has been modified so as to leave fit to the discretion of the Magistrate to send the lunatic to a medical officer instead of calling in medical officer to examine the lunatic ; further, under the clause as amended it will be unnecessary for the Magistrate to send the alleged lunatic for medical examina-

tion if, when such lunatic is produced before him, the Magistrate should think it unnecessary to proceed with the enquiry. We have further amended this clause so as to admit of a Magistrate sending a lunatic to a private asylum only when the person in charge of such asylum consents to receive such lunatic."

—S. C. R.

### 15. Order in case of lunatic cruelly treated or not under proper care and control.

(1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum.

### 16. Detention of alleged lunatic pending report by medical officer.

(1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable

#### Section 15 — Note 1

[1] The words of S. 15 (1) are wide in their scope. A Magistrate has jurisdiction to direct detention of a person as a lunatic on information contained in official correspondence and a personal presentation of a written complaint is not necessary. 1936 Sind 156 (157) [AIR V 23] : 29 Sind L R 431 : 37 Cri L Jour 1082 (DB).

[2] The words "such relative or person" relate to "or is cruelly treated or neglected by any relative or other person having charge of him." Where an order under S. 15 (1) is passed on the ground that the alleged lunatic is not under proper care or control and not on the ground that he is cruelly treated or neglected, there is no necessity of formally summoning the relatives of the lunatic with whom he is living. It is sufficient if the Magistrate calls and speaks to the relatives, although he does

not formally summon them. 1936 Sind 156 (157) [AIR V 23] : 29 Sind L R 431 : 37 Cri L Jour 1082 (DB).

[3] Where an Additional District Magistrate passes a reception order under S. 15, the question of maintenance of lunatic has to be decided under S. 88 either by the High Court or by the District Court. The Magistrate acts without jurisdiction in passing order for costs of maintenance. (38) 40 Pun L R 496 (497).

#### Section 16 — Note 1

[1] The purpose of S. 16 is to limit the period of detention for the purpose of observation. If before the expiry of ten days, the Magistrate is satisfied with the medical officer's report and the medical officer himself does not require full ten days, there is nothing to prevent him from varying his order and shortening the period of detention. 1936 Sind 156

custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary :

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

### 17. Commissioner of Police, etc., to act in the Presidency-town.

All acts which the Magistrate is authorised or required to do by section 14, 15 or 16 may be done in the Presidency-towns \*[\* \* \*] by the Commissioner of Police; and all duties which an officer in charge of a police-station is authorised or required to perform may be performed in any of the Presidency-towns by an officer of the police force not below the rank of an inspector.

[a] The words "or Rangoon" were *omitted* by A. O., 1937.

### STATE AMENDMENT

#### MAHARASHTRA

In its application to the whole of the State of Maharashtra, in section 17—

(a) for the words "in the Presidency-towns" *substitute* the words "in the areas for which the Commissioners of Police have been appointed";

(b) for the words "any of the Presidency-towns" *substitute* the words "any of the said areas";

(c) in the marginal note, for the words "in the Presidency-town" *substitute* "in the area under his charge". —Bom. Act LVI of 1959, S. 3 and Sch. [4-1-1960].

*Further provisions as to reception orders and medical certificates.*

### 18. Medical certificates.

(1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

#### Section 16 — Note 1 (contd.)

(157) [AIR V 23] : 29 Sind L R 431 : 37 Cri L Jour 1082 (DB).

[2] Civil Surgeon is not the only medical officer within the provisions of S. 16. Medical Officer according to S. 2 (7) means a "gazetted medical officer." Moreover, when certificate granted by another medical officer is counter-signed by the Civil Surgeon, it is in effect with his certificate. 1936 Sind 156 (157) [AIR V 23] : 29 Sind L R 431 : 37 Cri L Jour 1 82 (DB).

[3] Section 16 which relates only to the temporary detention of the alleged lunatic for a specific time for the purpose of observation by medical officer also applies to a case when

Magistrate acting under S. 14 thinks detention necessary for the purpose of observation. 1936 Sind 156 (157) [AIR V 23] : 29 Sind L R 431 : 37 Cri L Jour 1082 (DB).

#### Section 17 — Note 1

[1] The Lunacy Act does not authorise the Commissioner of Police to delegate powers to Deputy Commissioner. Section 6, Madras City Police Act is *ultra vires* as Local Legislature cannot confer on the Commissioner of Police authority to delegate powers which are conferred on him by an Act of the Imperial Legislature. ('36) 1936 Mad W N 1136 (1136) (DB).

**19. Time and manner of medical examination of lunatic.**

(1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

**20. Authority for reception.**

A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition, for the person authorised so to do by the person making the order, to take the lunatic and convey him, to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order :

\*[Provided that no reception order shall continue to have effect —

(a) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(b) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

[a] *Inserted* by Lunacy (Amendment) Act, 1923 (XXXII of 1923), S. 2.

**21. Copy of reception order to be sent to person in charge of asylum.**

Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

**22. Restriction as to asylums into which reception orders may direct admission.**

Subject to the provisions of section 85, no Magistrate shall make a reception order for the admission of any lunatic into "[any Government asylum] outside the State in which the Magistrate exercises jurisdiction.

[a] *Substituted* for "any asylum established by Government", by A. O., 1937.

*Detention of lunatics pending removal to asylum*

**23. Detention of lunatics pending removal to asylum.**

When any reception order has been made under section 7, 10, 14 or 15, the Magistrate may, for reason to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

*Reception and detention of criminal lunatics*

**24. Reception and detention of criminal lunatics.**

An order under section 466 or section 471 of the Code of Criminal Procedure, 1898, or under section 30 of the Prisoners Act 1900 \* [or under section 103A of the Indian Army Act,<sup>b</sup> 1911], directing the reception of a criminal lunatic into

**Section 24 — Note 1**

[1] Under Lunacy Act the Magistrate is no longer required to report cases under S. 471 (1), Criminal P. C., for the order of the Local Government but is himself competent to direct

the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics. 1915 Low Bur 34 (35) [AIR V 2] : 8 Low Bur Rul 290: 16 Cri L Jour 670.

any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

[a] *Inserted* by the Army (Amendment) Act, 1923 (XXXIII of 1923), S. 5. [b] *See now* the Army Act, 1950 (XLVI of 1950), S. 145.

#### *Reception after inquisition*

### **25. Reception after inquisition.**

A lunatic so found by inquisition may be admitted into an asylum—

- (1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court;
- (2) in the case of an inquisition under Chapter V, on an order made by the District Court.

### **26. Order for payment of cost of maintenance of lunatic.**

(1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him:

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

#### *Amendment of order or certificate*

### **27. Amendment of order or certificate.**

If, after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

## CHAPTER III

### CARE AND TREATMENT

#### *Visitors*

### **28. Appointment of visitors.**

(1) The [State Government] shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor ex-officio of all the asylums within the limits of his jurisdiction.

### **29. Monthly inspection by visitors.**

Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the

admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

### 30. Inspection of criminal lunatics by Inspector-General or visitors.

(1) When any person is <sup>a</sup>[detained] under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898 <sup>b</sup>[or under the provisions of section 103A of the Indian Army Act,<sup>c</sup> 1911], the Inspector-General of Prisons, if such person is <sup>a</sup>[detained] in a jail or the visitors of the asylum or any two of them, if he is <sup>a</sup>[detained] in an asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is <sup>a</sup>[detained].

(2) The <sup>a</sup>[State Government] may empower the officer in charge of the jail in which such person may be <sup>a</sup>[detained] to discharge all or any of the functions of the Inspector-General under sub-section (1).

[a] Substituted for "confined" by the Repealing and Amending Act, 1923 (XI of 1923), S. 2 and Sch. [b] Inserted by the Army (Amendment) Act, 1923 (XXXIII of 1923), S. 5. [c] See now the Army Act, 1950 (XLVI of 1950), S. 145.

#### *Discharge of lunatics*

### 31. Order of discharge from asylum by visitors.

(1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged :

Provided that no order under this sub-section shall be made in the case of a person detained under a reception order under section 12, or, in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

### 32. Discharge of lunatics in other cases and of European military lunatics.

(1) A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum:

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accordance with the military <sup>a</sup>[ , naval] <sup>b</sup>[or air force] regulations in force for the time being, or until the officer making the order applies for his transfer to the military <sup>a</sup>[ , naval] <sup>b</sup>[or air force] authorities in view to his removal to England.

(3) Whenever it appears to the officer in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer Commanding the division, district, brigade, or force, or other officer authorised to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in



accordance with the military <sup>a</sup>[ , naval] <sup>b</sup>[or air force] regulations in force for the time being.

[a] *Inserted* by the Amendment Act, 1934 (XXXV of 1934), S. 2 and Sch. [b] *Inserted* by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. 1.

### 33. Order of discharge on undertaking of relative for due care of the lunatic.

When any relative or friend of a lunatic detained in any asylum under the provisions of section 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

#### SECTION 33A

#### STATE AMENDMENTS

##### GUJARAT

Same as that given under Maharashtra.

##### MADHYA PRADESH

In its application to the whole State of Madhya Pradesh, after section 33, the following new section shall be *inserted* namely :—

“33-A. *Temporary release of lunatics on parole.* (1) When any relative or friend of a lunatic detained in, asylum under the provisions of section 7, 10, 14 or 15 is desirous that such lunatic shall be temporarily released and delivered over to his care and custody, he may make an application to the person in charge of the asylum, who shall make an order for the temporary release of such lunatic for a period not exceeding sixty days, unless for any reason he considers that such release is undesirable and such lunatic shall, thereupon, be so released.

(2) No order under sub-section (1) for the temporary release of a lunatic detained under section 7 or 10 shall be passed except on an application of the petitioner on whose petition such lunatic was detained or without the consent in writing of such petitioner :

Provided that, if in any such case, it appears to the person in charge of the asylum that such petitioner refuses, without sufficient reasons, to accord such consent, he shall refer the application made to him under sub-section (1) to the Magistrate who would have jurisdiction to detain such lunatic under section 7 or 10 and such Magistrate may, after making such enquiry as he thinks fit, order the temporary release of such lunatic for the period specified in sub-section (1).

(3) Any order made for the release of a lunatic under sub-section (1) may, on the application of any relative or friend, at any time during the period of his release, be set aside or varied by the Magistrate who would have jurisdiction to detain such lunatic in any asylum under section 7, 10, 14 or 15 on any ground other than that the lunatic was not in a state of mind fit to be released at the time the order for his release was made under sub-section (1). If the order of release is so set aside, the lunatic shall be re-admitted and detained in the asylum.

(4) If a lunatic released under sub-section (1) or (2) is, at any time during the period of his release, found to be unmanageable or dangerous and unfit to be at large, the person who applied for his release may take the lunatic to the asylum, and such lunatic shall thereupon be re-admitted and detained in the asylum.

(5) If a lunatic released under sub-section (1) or (2) does not return to the asylum at the expiration of the period for which he was released and if no order for his discharge has been passed under section 31 or section 33 or if he is, at any time during the period of his release, found to be unmanageable or dangerous or unfit to be at large and the person who applied for his release states by a written application to the person in charge of the asylum that he is unable to bring him to the asylum such lunatic shall be deemed to have escaped from the asylum and may at any time within one month after the expiration of the said period be re-taken to and detained in the asylum in the manner provided in section 36 :

#### Section 33 — Note 1

[1] An application in *habeas corpus* that a person alleged to be wrongly confined as a lunatic should be produced and set at liberty is misconceived and the appropriate remedy

is by way of an application under S. 33. 1936 Sind 156 (157) [AIR V 23] : 29 Sind L R 431 : 37 Cri L Jour 1082 (DB).

Provided that such a person shall be deemed to be discharged if on or before the expiry of the period for which he was released, the Board of Visitors is satisfied either (a) as a result of investigations conducted by the person in charge of the asylum concerned or (b) on receipt of a certificate signed by a medical practitioner that the person may with safety be discharged."

— M. P. Acts XXIII of 1952, S. 2 [31-10-1952] and XXIII of 1958, S. 2.

### MADRAS

After section 33, Madras Act XV of 1938, the following section shall be *inserted*, namely :—

"33A. *Temporary order of discharge of lunatic in interests of his health.* If the person in charge of any asylum in which a lunatic is detained under the provisions of section 7, 10, 14, 15 or 17, is satisfied that in the interests of the health of the lunatic, it is necessary to discharge him temporarily, the person aforesaid may order such discharge for such period as he may think fit and subject to such conditions as the Provincial Government may by rule prescribe."

— Mad. Act XV of 1938, S. 2. [25-10-1938]; XII of 1943, S. 2. [22-6-1943] and VII of 1948.

### MAHARASHTRA

In its application to the State of Bombay, section 33A is *inserted* after section 33. This new section 33A is same as that given under Madhya Pradesh subject to the following modifications, namely :—

(a) *Delete* the words "on parole" from the marginal note.

(b) In sub-section (1), for "detained in asylum" *substitute* "detained in any asylum."

(c) In sub-sections (1) and (3), for the word and figures "or 15" *substitute* the word and figures "15 or 17".

— Bom. Act XV of 1938, S. 2 [24-6-1938].

### SAURASHTRA

Same as that of Maharashtra — Saur. Act XLII of 1953, S. 2 [14-12-1953].

## 34. Discharge of person subsequently found on inquisition not to be of unsound mind.

If any lunatic detained in an asylum on a reception order made under section 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

### *Removal of lunatics*

## 35. Removal of lunatics and criminal lunatics.

(1) <sup>a</sup>[Any lunatic may, in accordance with any general or special order of the <sup>a</sup>[State Government], be removed from <sup>b</sup>[any Government asylum] to any other asylum within the <sup>a</sup>[State], or to any other asylum in any other <sup>a</sup>[State] with the consent of the <sup>a</sup>[State Government] of that <sup>a</sup>[State] : ]

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

(2) The <sup>a</sup>[State Government] may make such general or special order as <sup>a</sup>[it] thinks fit directing the removal of any person for whose <sup>d</sup>[detention] an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898, <sup>a</sup>[or under section 103A of the Indian Army Act, 1911], from the place where he is for the time being <sup>a</sup>[detained] to any asylum, jail or other place of safe custody <sup>b</sup>[in the State, or to any asylum jail or other place of safety in any other State with the consent of the State Government of that State].

[a] *Substituted* by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I. [b] *Substituted* for "any asylum established by Government," by A. O., 1937. [c] *Substituted* for "he" by Act XXXVIII of 1920, S. 2 and Sch. I. [d] *Substituted* for "confinement" by the Repealing and Amending Act, 1923 (XI of 1923), S. 2 and Sch. I. [e] *Inserted* by the Army (Amendment) Act, 1923 (XXXIII of 1923), S. 5. [f] *See now* the Army Act, 1950 (XLVI of 1950), S. 145. [g] *Substituted* for "confined", by Act XI of 1923, S. 2 and Sch. I. [h] *Substituted* for "in British India" by Act XXXVIII of 1920, S. 2 and Sch. I.

*Escape and re-capture***36. Order to justify detention and re-capture after escape.**

Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorised by law, and in case of escape may, by virtue of such order be re-taken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorised in that behalf by the said person in charge, and conveyed to and received and detained in such asylum :

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exerciseable only for a period of one month from the date of his escape.

**OBJECTS AND REASONS**

"We have amended, on the lines of the English Act [i.e. Lunacy Act, 1890], the provisions of the Bill regarding the re-arrest of escaped lunatics. These provisions are contained in [S. 36]. Under this [section] a luna-

tic who remains at large for more than one month after his escape can only be arrested and admitted into an asylum if fresh proceedings are taken against him under this Act."—S. C. R.

**PART III****JUDICIAL INQUISITION AS TO LUNACY****CHAPTER IV****PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS***Inquisition***37. Jurisdiction in lunacy in Presidency-towns.**

The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay.

**38. Court may order inquisition as to persons alleged to be insane.**

(1) The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be lunatic, is of unsound mind and incapable of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

**Section 37 — Note 1**

[1] The original jurisdiction of the High Court at Calcutta over lunatics extends to all persons, European and Indian residents in Calcutta and to all British born subjects throughout the Presidency of Bengal. The temporary removal to the mofussil of lunatic having his home, his place of business, his family and his servants in Calcutta, is not sufficient to oust the jurisdiction of the High Court over the lunatic. 1920 Cal 329 (330) [AIR V 7] (DB). (Per *le non . . .* *independent* *et* *contra*.)

[2] Where an alleged lunatic is subject to the jurisdiction of a High Court under S. 37, the District Court has no jurisdiction under S. 62, even though the person may reside within the Local limits of the jurisdiction of the District Court. 1921 Cal 309 (311) [AIR V 8] : 48 Cal 577 (SB).

[3] The original side of the Calcutta High Court has no jurisdiction to direct an inquisition or appoint a guardian of the person or

property of an Indian alleged to be a lunatic and not resident in Calcutta. 1932 Cal 91 (92) [AIR V 19] : 58 Cal 919.

[4] Sections grouped in Chaps. IV and V of Part III of the Lunacy Act, confer on the Court certain powers which can only be exercised in respect of the person or property of lunatic so found on inquisition. But these sections do not in terms contemplate or sanction the making of any interim order for the custody or the management of the estate of a person before he is adjudged to be a lunatic. There is no express provision in the Act, authorizing such an order. Nor is there anything in the rules framed by the High Court and embodied in Chap. 30 of the Original Side Rules. 1949 Cal 166 (169) [AIR V 38 C 40] : 1 L R (1947) 2 Cal 163.

**Section 38 — Note 1**

[1] An order directing an inquisition into a man's state of mind is a very serious thing

**Section 38 — Note 1 (contd.)**

and such an order is intended by the statutes to be judicial determination carefully made upon adequate materials. 1934 Nag 27 (27) [AIR V 21] : 30 Nag L R 224 \* 1924 Cal 858 (858) [AIR V 11] : 51 Cal 480 (DB) \* 1955 NUC (Mad) 3889 [AIR V 42] \* 1951 Mad 648 (649) [AIR V 38 C 188] \* 1949 All 449 (451) [AIR V 38 C 188] : ILR (1950) All 396 (DB).

[2] An application for inquisition should be verified. ('86) 1866 Suth W R (Mis) 54 (55) (DB) \* ('87) 7 Suth W R 267 (267) (DB).

[3] Section 38 does not define the test to be applied to determine whether a person is or is not subject to the jurisdiction of the High Court for the purpose of judicial inquisition as to lunacy. But the proceedings are directed primarily against the person and only secondarily against his property. The right of the Court to learn judicially whether a person is or is not of unsound mind is inferred from the right to his care and custody provided he is insane. Such authority over the person may, unless otherwise directed by statute, be ordinarily exercised in the case of residents within the local limits of the jurisdiction of the Court. It may also be exercised over non-residents, if there is statutory provision to that effect. 1921 Cal 309 (311) [AIR V 8] : 48 Cal 577 (SB) \* 1955 NUC (Mad) 3889 [AIR V 42].

[4] It is only with lunatics as defined in S. 3 (5) that the Act is concerned. It is therefore the duty of the Court before proceeding further to determine judicially whether the person alleged to be incapable of managing himself or his affairs is really a "lunatic" in this sense. The finding has got very far reaching consequences and must be given after very great care and deliberation. 1930 Lah 289 (291) [AIR V 17] \* 1955 NUC (Mad) 3889 [AIR V 42].

[5] The bare assertion of witnesses, unsupported by any details of the causes, the course and the treatment of the malady ought not to be accepted as satisfactory proof of insanity. ('74) 22 Suth W R 33 (33) (DB).

[6] What has to be found under the Lunacy Act is that the person is of unsound mind and that the unsoundness of mind is such as to make him incapable of managing his affairs. A person who is incapable of managing his affairs is not necessarily of unsound mind and a person of unsound mind may not be incapable of managing his affairs. The Court must hold that both unsoundness of mind and incapacity to manage his affairs are present and that the latter is due to the former. 1935 Mad 91 (91) [AIR V 22] : 58 Mad 281 (DB) \* ('05) 1905 All W N 8 (9) (DB) \* 1934 Nag 27 (28) [AIR V 21] : 30 Nag L R 224.

[7] Person voluntarily remaining silent for 26 years — Person nervous and fidgety, not answering simple questions without delay and persuasion and could be easily imposed upon — Such person is incapable of managing his affairs due to weakness and unsoundness of mind. 1939 All 333 (334, 335) [AIR V 26] : ILR (1939) All 510 (DB).

[8] From the mere fact that due to an attack of infantile paralysis when aged three the

mental development of a person was arrested, it does not follow that he is of unsound mind. 1935 Mad 91 (91) [AIR V 22] : 58 Mad 281 (DB).

[9] Person of weak memory, on account of paralysis and old age, cannot necessarily be said to be of unsound mind and incapable of managing his affairs. 1926 Cal 155 (157) [AIR V 13] (DB).

[10] The law does not contemplate that a person alleged to be a lunatic should be exposed to the publicity and harassment of a trial unless there is some foundation for apprehending that he is incapable of managing his affairs. ('11) 8 All L Jour 179 (181) (DB).

[11] Mere weakness of intellect not being unsoundness of mind, proceedings under this Act cannot be taken in respect of a person of weak intellect, though he may, from such weakness of intellect, be incapable of managing his own affairs. ('06) 4 Cal L Jour 115 (117, 118) (DB) \* 1955 NUC (Mad) 3889 [AIR V 42].

[12] It by no means follows that because a man may have delusions upon one or two points that he is incapable of managing his affairs. ('11) 8 All L Jour 179 (181) (DB).

[13] The elaborate procedure laid down by the Legislature for conducting an inquiry must be strictly followed. The Court should not consider itself relieved of its responsibility by the mere circumstance that some or all of the relatives of the person concerned have declared that he is a lunatic. The Court ought to form its independent judgment. 1930 Lah 289 (291) [AIR V 17] \* 1955 NUC (Mad) 3889 [AIR V 42].

[14] A Judge has got a discretion to stop proceedings in an inquisition for proper grounds, as for instance, where the medical evidence shows that further enquiry is unnecessary. A petitioner is not entitled under the Act to have the inquiry conducted so long as he is able to tender witnesses for examination. 1917 Mad 194 (194) [AIR V 4] (DB) \* 1955 NUC (Mad) 3889 [AIR V 42].

[15] Application by wife for inquisition in interests of husband — Costs cannot be ordered to be paid by successful husband to unsuccessful wife. 1935 Mad 91 (92) [AIR V 22] : 58 Mad 281 (DB).

[16] Where the Judge has *prima facie* evidence before him, which consists of affidavits and documents filed by consent, there is nothing wrong in his ordering the production of the lunatic, directing his examination by a Medical Officer and adjudging him a lunatic on the strength of the medical report. 1951 Mad 648 (649) [AIR V 38 C 188].

[17] Inquisition — Medical examination, Judge having *prima facie* evidence before him — Order for producing lunatic and directing his examination by Medical Officer not wrong — Notice should be served on lunatic before making such order — Lunatic served with notice — Inquisition can proceed *ex parte*. 1955 NUC (Mad) 3889 [AIR V 42].

**39. Application by whom to be made.**

Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.

**40. Notice of time and place of inquisition.**

(1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

**41. Powers of Court in respect of attendance and examination of lunatic.**

(1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

(2) The Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

**42. Rules respecting attendance and examination of females alleged to be lunatic.**

The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

**Section 39 — Note 1**

[1] A member of the same tribe is not a relative and is not, therefore, competent to make an application under this section. ('06) 1906 Pun Re No. 94, p. 337 (340, 341).

[2] An order refusing to declare person as lunatic on application under S. 39 is not judgment within the meaning of Cl. 15 of the Letters Patent (Bom) and is not appealable. 1933 Bom 112 (113, 114) [AIR V 20] : 57 Bom 371 (DB).

**Section 40 — Note 1**

[1] The notice contemplated by S. 40 is a notice to be drawn up after there has been an order directing an inquisition. It is notice of such order and of the time and place at which the inquisition is to be held. It is not a notice of the petition. There is nothing in the Lunacy Act about general notices. 1927 Cal 636 (638, 639) [AIR V 14] : 54 Cal 636 (DB) \* 1955 NUC (Mad) 3889 [AIR V 42].

[2] Once notice has been served on the alleged lunatic in the manner provided by S. 40, subsequent proceedings may be *ex parte* and the attendance of the alleged lunatic is not a condition precedent to the disposal of the inquisition proceedings. 1926 Sind 223 (224) [AIR V 13] \* 1955 NUC (Mad) 3889 [AIR V 42].

**Section 41 — Note 1**

[1] If the alleged lunatic is a person of rank exempted from personal appearance in Court in ordinary civil proceedings, his personal

appearance in Court in an enquiry into the state of his mind should be dispensed with. ('06) 5 Suth W R (Mis) 54 (55) (DB) \* 1955 NUC (Mad) 3889 [AIR V 42].

[2] It is not intended that the alleged lunatic should be summoned before a public Court as a witness, and subjected to examination as a witness by the vakil of the person on whose petition the enquiry was instituted. ('67) 7 Suth W R 246 (246) (DB) \* 1955 NUC (Mad) 3889 [AIR V 42].

[3] In examining the alleged lunatic, the greatest care and delicacy should be observed, and everything likely to cause unnecessary pain or excitement to him avoided. ('06) 5 Suth W R (Mis) 54 (55) (DB) \* 1955 NUC (Mad) 3889 [AIR V 42].

[4] In an application for the appointment of a guardian for a gosha lunatic the Court cannot insist on the production of the lunatic in public Court. The person responsible for the production of the lunatic gosha lady is entitled to request the Court to examine her in a place other than the public Court. The Court would not be justified in refusing such a request and dismissing the petition for the appointment of a guardian for the lunatic on the ground of the non-production of the lunatic in Court. 1952 Mad 80 (80) [AIR V 39].

**Section 42 — Note 1**

[1] Section 42 in terms refers only to the attendance and examination of the lunatic in Court; but the principle contained in S. 42

**43. Power to direct District Court to make inquisition in certain cases.**

(1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

**44. Amendment of finding of District Court if defective or insufficient in form.**

If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form it may either amend the same or refer it back to the Court which made the inquisition to be amended.

**45. Proceedings on finding of Court.**

The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act, 1958\* immediately before the commencement of this Act.

[a] *Repealed by this Act.*

*Judicial powers over person and estate of lunatic.***46. Custody of lunatics and management of their estates.**

(1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

**47. Powers of manager in respect of management of lunatic's estate.**

The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of

**Section 43 — Note 1 (contd.)**

would apply equally to her attendance and examination before a doctor — The course is to have her examined by a lady-doctor. 1930 Oudh 301 (302) [AIR V 17] (DB).

[2] Under Ss. 42, 41 and 64, a Court cannot insist on the production of the alleged lunatic who is a goshia lady in Court. 1952 Mad 80 (80) [AIR V 39].

**Section 46 — Note 1**

[1] A person seeking to be a manager of the estate of the lunatic under S. 46 cannot rely upon an executive order made by a Magistrate under S. 11 or S. 11A of the Act. A person seeking to be appointed as the manager of the estate of the lunatic under S. 46 must follow the procedure laid down for obtaining such order. 1955 NUC (Mad) 3889 [AIR V 42].

the property, whether moveable or immoveable, of which the estate may consist :

Provided that no manager so appointed shall without the permission of the Court—

- (a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic; or
- (b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

#### OBJECTS AND REASONS

"We have . . . . . provided . . . . . that a manager appointed by the High Court shall have power to lease any immoveable property for any term upto five years without the per-

mission of the Court; we have in this respect assimilated the powers of a manager under the High Court to those of a manager under the District Court."—S. C. R.

#### 48. Power to make order concerning any matter connected with the lunacy.

The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit.

#### *Management and administration*

#### 49. Power to dispose of lunatic's property for certain purposes.

The Court may, if it appears to be just or for the lunatic's benefit, order that any property, moveable or immoveable, of the lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

- (1) the payment of the lunatic's debts or engagements;
- (2) the discharge of any incumbrance on his property;
- (3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto;
- (5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

#### 50. Execution of conveyances and powers by manager under order of Court.

(1) The manager of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

#### Section 48—Note 1

[1] The use of the word "petition" in S. 48 is used in contradistinction to a "suit" and indicates that matters, properly the subject of the provisions of S. 48, can be brought before the Court by a proceeding other than a suit. The Court having been seized of the matter regarding the lunatic and his estate by means of an original petition under which it is found that the person is of unsound mind and incapable of managing himself and his affairs, it is unnecessary that any further proceed-

ings arising in respect of the matter should have to be prosecuted by means of another original petition. However, S. 48 is not mandatory but is permissible and the Court should refer the parties to a suit in cases which it considers likely to be complex or lengthy or properly matters which should be voiced by way of a suit and which cannot conveniently be dealt with by the summary procedure indicated in S. 48. 1939 Mad 224 (226, 227) [AIR V 26]\*1955 NUC (Mad) 3889 [AIR V 42].



(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

### **51. Court may order performance of contract.**

Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

### **52. Dissolution and disposal of property of partnership on a member becoming lunatic.**

(1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

### **53. Disposal of business premises.**

Where a lunatic has been engaged in business the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

### **54. Manager may dispose of lease.**

Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

### **55. Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.**

If a lunatic is possessed of any immoveable property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the State wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management :

Provided that---

(1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immoveable property which so subjects the proprietor as aforesaid :

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct :

(3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the



management of the said immoveable property which so subjects the proprietor as aforesaid) the powers given by any other section.

**56. Power to apply property for lunatic's maintenance without appointing manager in certain cases.**

(1) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

*Vesting orders*

**57. Power to order transfer of stock belonging to lunatic in certain cases.**

Where any stock or Government securities or any share in a company (transferable within "[India] or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

[a] *Substituted* for "the States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule. [1-4-1951].

**58. Power to order transfer of stock of lunatic residing out of India and the United Kingdom.**

Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of "[India] and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

[a] *Substituted* for "the States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

**Section 56 — Note 1**

[1] An order of the District Judge in his lunacy jurisdiction that a certain sum of money, which was in deposit with the Land Acquisition Judge to the credit of a lunatic should be paid out to his natural guardian who was maintaining the lunatic and his family is in accordance with S. 56 and the Land Acquisition Judge has no jurisdiction to refuse to pay out the particular sum as directed by the order. 1917 Cal 99 (100) [A I R V 4] (DB).

**Section 57 — Note 1**

[1] It is only when the Court is satisfied that a person is of unsound mind and incapable of managing his affairs that it can exercise powers given by S. 57—No evidence that person had been found of unsound mind and incapable of managing his affairs or that curator to such person had given security or that funds were required for maintenance of person—Order under this section held should not be made. ('84) 8 Bom 280 (286).

*General***59. Power to apply property for lunatic's maintenance in case of temporary lunacy.**

If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

**OBJECTS AND REASONS**

*See under section 74, post.*

**60. Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.**

(1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

**61. Power of Court to make rules.**

The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy.

**CHAPTER V****PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY-TOWNS***Inquisition***62. Power of District Court to institute inquisition as to persons alleged to be lunatic.**

Whenever any person not subject to the jurisdiction of any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the District Court, within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

**Section 61 — Note 1**

[1] Section 61 and rules framed thereunder are applicable only to cases in Presidency Towns and, as regards those outside, they apply only when there are no other rules. 1918 Cal 353 (355) [AIR V 5] (DB).

**Section 62 — Note 1**

[1] Lunatic received in Mental Hospital under order of one District Court — Hospital not within jurisdiction of that Court — No evidence of jurisdiction being retained subsequently — Application for inquisition can be entertained by Court within whose jurisdiction alleged lunatic ordinarily resided and has his property. 1931 Cal 711 (712) [AIR V 18] (DB) \* 1929 Cal 512 (512) [AIR V 16] (DB) \* 1950 Mad 371 (373) [AIR V 37 C 166] : ILR (1950) Mad 260 : 51 Cri L Jour 898 (DB).

[2] Temporary removal of lunatic to mofussil does not oust jurisdiction of High Court over lunatic and application under S. 62 in relation to such lunatic must be made on original side of High Court. 1920 Cal 329 (330) [AIR V 7] (DB).

[3] The Act contemplates only the question of lunacy or sanity at the time of the inquiry; there is no provision in the Act that the inquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind. (70) 13 Moo Ind App 519 (524) (PC). (Case under Act of 1858) \* 1916 Cal 51 (54) [AIR V 3] (DB). (Case under Act of 1858) \* (95) 18 Mad 472 (476).

[4] Inquisition under S. 62 affects the person so prejudicially that it ought not to be taken except upon a careful consideration of evidence. 1924 Cal 658 (658) [AIR V 11] : 51

## Lunacy

**63. Application by whom to be made.**

(1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841<sup>a</sup> (hereinafter referred to as the Curator), or by the Government Pleader, as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in any <sup>a</sup>[State] where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

[a] See now the Indian Succession Act, 1925 (XXXIX of 1925).

**Section 62 — Note 1 (contd.)**

Cal 480 (DB) + 1932 Cal 20 (22) [AIR V 19] (DB).

[5] Judge must satisfy himself by inquiry and personal interview with alleged lunatic that there is ground for inquisition. 1920 All 80 (81) [AIR V 7] : 42 All 504 (DB) + 1951 Mad 648 (649) [AIR V 38 C 188].

[6] The first thing which has to be done upon an application for directing an inquisition under R. 62 is that the Judge either with notice to the lunatic or without notice should carefully consider whether the case is one which calls for an order directing an inquisition. If he considers that it calls for an order directing an inquisition then it is his obvious duty to record an order directing an inquisition. When he has once done that he is then, by the combined operation of S. 62 with Ss. 40, 41 and 42 of the Act, to take certain steps with regard to notice. It is only a preliminary investigation which is required to justify an order directing an inquisition. Then, an order having been duly made directing an inquisition, the date having arrived and proper notices having been given, the inquisition itself proceeds. Without an order directing an inquisition the inquisition itself is without jurisdiction. 1927 Cal 636 (637, 638) [AIR V 14] : 54 Cal 836 (DB) + 1930 Lah 289 (292) [AIR V 17].

[7] Verified petition about lunacy of person—District Judge without recording order for inquisition merely issuing commission on Munsif for inquiry and report—Such report treated by District Judge as inquisition—Proceedings held would not be treated as inquisition. 1932 Cal 20 (22) [AIR V 19] (DB).

[8] Factum of lunacy being contested, Court should not base its conclusion on personal observation alone but follow the procedure in S. 62. 1926 Lah 580 (586) [AIR V 13].

[9] Application for inquisition must be supported by affidavit and medical certificate. 1920 All 80 (81) [AIR V 7] : 42 All 504 (DB) + 1927 All 225 (225) [AIR V 14] : 49 All 3 (DB) + 1955 NUC (Mad) 3889 [AIR V 42].

[10] An inquisition if once begun must be proceeded with to the end. 1920 All 80 (81) [AIR V 7] : 42 All 504 (DB) + 1917 Mad 194 (194) [AIR V 4] (DB) + 1955 NUC (Mad) 3889 [AIR V 42].

[11] Once notice is served on lunatic, subsequent proceedings can proceed without the lunatic. 1926 Sind 223 (224) [AIR V 13].

[12] An order directing an inquisition into a man's state of mind is a very serious thing and such an order is intended by the statute to be a judicial determination carefully made upon adequate material. 1951 Mad 648 (649) [AIR V 38 C 188] + 1955 NUC (Mad) 3889 [AIR V 42].

[13] An alleged lunatic has his permanent residence where his paternal home exists and where his family resides and the District Court having jurisdiction over that place can entertain an application for directing judicial inquisition under S. 62. 1955 NUC (Mad) 3889 [AIR V 42].

[14] Temporary removal of a lunatic to mofussil does not oust the jurisdiction of a High Court over the lunatic. An application under S. 62 in relation to such lunatic must be made on the original side of the High Court. 1955 NUC (Mad) 3889 [AIR V 42].

[15] When the lunatic dies the lunacy jurisdiction comes to an end and the Court must pass some order about the property in the hands of the manager. If the title to the property be in dispute the Court may either decide the issue or ask the manager to file an interpleader suit. But whichever course is followed, the order of the Court will be referable to the jurisdiction exercised over the property of the lunatic under Chap. V of the Lunacy Act and the order must be deemed to be an order under that chapter and according to S. 83 an appeal would be from such an order. 1949 Nag 108 (109) [AIR V 36 C 38] : H.R. (1948) Nag 465 (DB).

[16] A Court has power to dismiss an application *in limine* without directing inquisition after examining the parties. 1957 Andh Pra 938 (939) [AIR V 44 C 294] : H.R. (1955) Andh 398 (DB).

**Section 63 — Note 1**

[1] "Curator" means public curator appointed under Succession (Property Protection) Act, 1841—Persons not so appointed can be removed under S. 80. 1933 L.J. 626 (627) [AIR V 20].

[2] An application under S. 63 can be filed by any person and it need not be filed by a person who is interested in the property of the lunatic. No question of title to any property is involved and it cannot be said that an order under the Lunacy Act affects directly or indirectly any claim to property. The case, therefore, does not come within Part 2 of

**64. Regulation of proceedings of District Courts.**

The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate.

**65. Inquisition by District Court and finding thereon.**

(1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

**66. Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.**

(1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a Commission to any subordinate Court to make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

**Section 63 — Note 1 (contd.)**

S. 110. 1950 All 242 (244) [AIR V 37 C 92]  
ILR (1951) 1 All 157 (DB).

**Section 64 — Note 1**

[1] Under Ss. 41, 42 and 64 read with S. 132 (1), Civil P. C., a Court cannot insist on the production of the alleged lunatic who is a gosha lady, in Court. 1952 Mad 80 (80) [AIR V 39].

**Section 65 — Note 1**

[1] After the inquisition has been completed, the Court must record a judicial finding on points mentioned in S. 65 (2) on the materials before it. It is only when these findings have been arrived at as a result of the inquisition that the jurisdiction of the Court to proceed further with the case arises. 1930 Lah 289 (292) [AIR V 17].

[2] Person should not be adjudged as of unsound mind unless clearly proved to be so. 1916 Lah 222 (222, 223) [AIR V 3].

[3] The High Court has power to interfere to correct a wrong finding under S. 65 (2) Lunacy Act. 1934 Nag 27 (29) [AIR V 21]; 30 Nag L R 224.

[4] In an enquiry as to the insanity of any person no Judge has any right, or any jurisdiction to delegate his function to a third person except person appointed to assist or advise a Judge. But such a person is no more than a witness and the Judge must retain the judicial function in his own person. 1921 All 160 (161) [AIR V 8]; 43 All 459 (DB).

[5] Person found to be lunatic under the Act is presumed to continue to be of unsound mind until the contrary is shown. 1917 Mad 265 (266) [AIR V 4]; 40 Mad 660 (DB).

[6] Although an order in lunacy is not a judgment which is conclusive against the world as one of the judgments enumerated in S. 41, Evidence Act, it is (still relevant and binding upon the parties thereto) and those who claim under them just like any other

judgment. 1933 Mad 624 (625) [AIR V 20]; 56 Mad 904.

[7] The scope of an inquiry under R. 15 of O. 32, Civil P. C. is not the same as that contemplated under the Lunacy Act. Where an application is presented for the stay of proceedings in the suit or in the alternative for the transfer of the suit to the court in which a lunacy petition relating to one of the parties is pending but as on the date of that application the inquiry under O. 38, R. 15 had practically concluded it is not a fit case for exercising the inherent power of the court to grant the application. 1954 Trav-Co 380 (381) [AIR V 41 C 131].

[8] A court has power to dismiss an application in limine without directing inquisition after examining the parties. 1957 Andh Pra 938 (939) [AIR V 44 C 294]; ILR (1955) Andh 568 (DB).

[9] Unsoundness of mind implies some unusual feature of the mind as has tended to make it different from the normal and has in effect impaired the man's capacity to look after his affairs in a manner in which another person without such mental irregularity would be able to do in a matter of his own. If a man is able to understand and answer questions on various matters except those relating to arithmetical calculations, he cannot be regarded as mentally unsound, although he would be held as having a weak or undeveloped mind. 1949 All 449 (452) [AIR V 36 C 168]; ILR (1950) All 396 (DB).

[10] An order declaring a person to be of unsound mind and incapable on that account of managing his affairs is an order of a very serious character. It has the effect of disqualifying him from using his own property in the manner he desires and placing a drastic check on his rights and privileges. The Legislature has, therefore, laid down an elaborate procedure for conducting an enquiry and it must be strictly followed. 1949 All 449 (451) [AIR V 36 C 168]; ILR (1950) All 396 (DB).

(2) On the completion of the inquisition the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub-section (2);

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

*Judicial powers over person and estate of lunatic*

### **67. Custody of lunatics and management of their estates.**

(1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependant on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

### **68. Court of Wards to be authorised in certain cases to take charge of estate of lunatic.**

If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorised to take charge of the same.

#### **Section 67 — Note 1**

[1] A petition to appoint a manager should not be dismissed without enquiry because the counter-petitioner denies the existence of any property belonging to the lunatic. The existence of such property is necessary as a prerequisite to the Court taking action and must be ascertained by enquiry when the existence of such is alleged by the petitioner and denied by the other party. (106) 29 Mad 310 (311) (DB).

[2] There is an inherent power in the Court dealing with lunacy matters to appoint an interim receiver, even though no action may be pending at the time and it makes no difference whether the lunatic has or has not been so found by inquisition. 1937 Cal 735 (737) [AIR V 24] : ILR (1938) 1 Cal 180 (DB).

[3] There is no provision in chapter 5, Lunacy Act, which would empower the Court to appoint an interim curator of a lunatic. 1943 Bom 387 (392) [AIR V 30] (DB).

[4] Where the manager of a Mitakshara family is a lunatic, a manager of the joint family property cannot be appointed because such a manager will obtain no right of management over the joint property. 1955 Andhra 261 (262) [AIR V 42 C 94] (DB).

[5] Although there is no express provision in the Lunacy Act authorising the Court to make any interim order for the custody or the management of the estate of a person before he is adjudged to be a lunatic, the Act is not exhaustive and does not take away the inherent power of a Court to do so. Proceedings in lunacy being civil proceedings in a Court of civil jurisdiction, S. 141, C. P. Code, will

apply and the powers for making interlocutory orders under O. 39 and O. 40 must necessarily become available to the Court. This section will also save the inherent powers of the Court. 1949 Cal 166 (169) [AIR V 38 C 40] : ILR (1947) 2 Cal 163.

[6] Under S. 67 of the Lunacy Act the District Judge on coming to a finding that the lunatic is incapable of managing his affairs, is empowered to appoint a manager and to entrust to him for management, the estate of the lunatic. Prima facie therefore he can at this stage take possession of and deal only with such property as is undisputed property of the lunatic and the Court will have no jurisdiction to take possession of property regarding which there is genuine dispute. He has thus jurisdiction to decide disputes relating to title to property. 1957 Madh B 96 (96) [AIR V 44 C 39] (DB).

[7] Court of Wards authorised to retain management of estate — Application under S. 67 (2) is not maintainable. 1952 Nag 54 (55) [AIR V 39] : ILR (1951) Nag 869 (DB).

#### **Section 68 — Note 1**

[1] Manager of estate cannot be appointed until Court of Wards have elected not to exercise jurisdiction. 1944 Sind 72 (72) [AIR V 31] (DB).

[2] The Civil Court after making an order adjudging the lunatic to be of unsound mind is *junctus officio* in cases in which the Court of Wards has jurisdiction. In such cases application should be made to the Court of Wards to assume superintendence and if necessary to appoint a manager. It is only in other cases,

## **69. Power to direct Collector to take charge of person and estate of lunatic in certain cases.**

(1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic :

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

## **70. Control over proceedings of Collector.**

All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the <sup>A</sup>[State Government] or of such authority as it may appoint in this behalf.

## **71. Power of District Court to appoint guardian and manager and take security from manager.**

(1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person :

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

### **Section 68 — Note 1 (contd.)**

i.e., cases where the Court of Wards has not jurisdiction or perhaps in cases when the Court of Wards does not elect to exercise that jurisdiction, that the Civil Court can make an order appointing a manager. ('12) 8 Sind L R 65 (66) (DB).

[3] Where a person, possessed of landed estate, is declared by the District Judge as of unsound mind it is not necessary for the Judge to inquire from the Court of Wards whether it would assume the management of the estate and only in case of refusal by that Court to appoint a manager of lunatic's property; the appointment by the Civil Court of a manager of a lunatic's property is valid, until the Court of Wards avails itself of its power of assuming the management of the estate. ('12) 15 Ind Cas 265 (266) (DB) (Oudh).

[4] Once the Court of Wards has been permitted under S. 68 to take charge of the estate of a lunatic the management of the property of a lunatic in such a case is left to be regulated by the special law governing the Court of Wards. 1952 Nag 54 (58) [AIR V 39] : IILR (1951) Nag 869 (DB).

### **Section 69 — Note 1**

[1] A collector appointed to take charge of the estate of a lunatic cannot sue himself on behalf of the lunatic, but must appoint a manager for the purpose. ('67) 7 Suth W R 5 (6) (DB).

### **Section 71 — Note 1**

[1] It is necessary for the Court to adjudge, upon evidence, a person to be a lunatic before passing an order as to the management of his property and for the guardianship of his person; it cannot proceed upon an admission made by the person who is alleged to be a lunatic. ('04) 31 Cal 210 (213) (DB) + ('05) 2 All L Jour 154 (155) (DB) + ('73) 20 Suth W R 477 (477) (DB) + ('71) 15 Suth W R 259 (259) (DB).

[2] It is incumbent upon a District Judge to appoint a manager of the estate of a person adjudged to be of unsound mind. ('03) 30 Cal 973 (975) (DB).

[3] Where a person has been adjudged to be a lunatic by a competent Court and a manager has been appointed in respect of his estate, the vesting order remains in force until the adjudication of lunacy is cancelled by the Court, which originally granted authority to the manager or the managership is determined by the death of the lunatic. The manager has a right to sue on behalf of the lunatic so long as the order appointing him as a manager subsists. ('12) 16 Ind Cas 885 (885, 886) (Oudh).

[4] Where there is no provision for survivorship in the order of appointment of the joint managers, the office of the survivor should terminate on the death of his co-manager. 1935 Cal 33 (34) [AIR V 22] : 61 Cal 986 (DB).

## 72. Restriction on appointment of legal heir of lunatic to be guardian of his person.

The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

### OBJECTS AND REASONS

"Under the present law the legal heir of a lunatic cannot in any circumstances be appointed the guardian of his person. We are informed that in many cases the legal heir is the only available guardian and the most suitable person to whose care the lunatic can be

entrusted. We have therefore altered the proviso to clause 71, making it a new clause 72, so as to admit of such an appointment when manifestly to the advantage of the lunatic."

— S. C. R.

## 73. Remuneration of managers and guardians.

A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

### Section 71 — Note 1 (contd.)

[5] If a member of a joint Hindu family under the Mitakshara Law be a lunatic, where it is shown that his property is being wasted, the Civil Courts have power to appoint a manager of the lunatic's share under the Lunacy Act, although no doubt a strong case must be made out for the appointment of a manager. 1929 Nag 93 (95) [AIR V 18] : 25 Nag L R 61 (DB).

[6] Beneficial interest of lunatic in joint property belonging to him along with other owners cannot be ignored in deciding what is property of lunatic. 1917 Mad 691 (691) [AIR V 4] (DB).

[7] Lunatic can adopt during the time when his property is vested in a Manager under the Act. 1917 Mad 265 (266) [AIR V 4] : 40 Mad 660 (DB).

[8] The guardian of a lunatic's person is, in matters connected with the guardianship subordinate to the District Court which appointed him. ('97) 24 Cal 133 (140) (DB).

[9] An order appointing a guardian of the person of a lunatic confers on the guardian unless anything exceptional appears to the contrary a right to the custody of the person of the lunatic, and the Court has power to make an order giving custody of the person of the lunatic to the guardian thus appointed. 1934 Mad 724 (724) [AIR V 21] : 58 Mad 252 (DB).

[10] The Act contains no express provisions as to the place of residence of a lunatic governed by the Act. But it contemplates that he shall reside within the jurisdiction of the Court that has found him to be a lunatic. ('97) 24 Cal 133 (141) (DB).

[11] There is no provision in the Act for assignment of the surety bond executed by the surety along with the manager of the lunatic's estate. But as the bond is executed with a view to being enforced and one of the ways of enforcement is by assigning the bond to the person entitled to recover the amount the proper course would be to assign the bond to the heirs of the lunatic. If there are sufficient

circumstances to indicate that some amount is likely to be due from the manager of the estate the proper course would be to assign the bond even before the suit for accounts against the manager is filed. 1945 Mad 80 (90) [AIR V 32].

### Section 72 — Note 1

[1] Section 72 operates as a kind of warning that particular care should be exercised by the Court, where a person is entitled to inherit part of the property of a lunatic and would, therefore, benefit by his death, to see that the appointment of such person as the guardian of the lunatic is a beneficial one. A legal heir having a greater interest if the lunatic dies, should not be appointed guardian of the person of the minor in preference to another who is a non-heir. 1934 Rang 164 (165) [AIR V 21] (DB).

[2] The High Court as a Court of Appeal will not take upon itself the duty of deciding who may be the fittest person to appoint as guardian of the person or property of a person who is adjudged a lunatic. That duty should rest with the Courts to which it is entrusted by the Lunacy Act. ('93) 15 All 29 (47) (DB).

[3] Restrictions under S. 72 become inapplicable in cases where near relations only can be appointed guardian of person of lunatic. 1925 Oudh 642 (642) [AIR V 12].

[4] Under S. 72, heir of lunatic may be his guardian—Wife has first claim to guardianship of lunatic. 1917 All 456 (457) [AIR V 4] : 39 All 158 (DB).

[5] Where a Shia Muhammadan who was adjudged a lunatic, had a wife at the time of adjudication but their child had died before adjudication and there was no reason precluding the possibility of further issue of the marriage, held that under the Shia Law the wife was one of the legal heirs of the lunatic and as such was excluded from being appointed guardian of the husband. ('93) 15 All 29 (46) (DB).



**74. Duties of guardian.**

(1) The person appointed to be guardian of lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

**OBJECTS AND REASONS**

"In this clause and clause 62 [now S. 59] and elsewhere the words "such members of his family as are dependent on him for their maintenance" have been substituted for the

word "family" in view of the decision of the Calcutta High Court in the case of *Chandrabati v. Manjy Lal*, I.L.R. 23 Cal 512."

— S. O. R.

**75. Powers of manager.**

(1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic :

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immovable property of the lunatic,

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

**Section 74 — Note I**

[1] The word "family" does not include a married daughter of the lunatic living with her husband apart from her father, but includes only persons living with the lunatic as members of his family and dependent on him for their maintenance. ('98) 23 Cal 512 (514) (DB).

**Section 75 — Note I**

[1] Manager cannot interfere with personal law of lunatic member of joint Hindu family. 1942 All 267 (278) [A I R V 29] : I L R (1942) All 518 (DB).

[2] Where a manager is appointed of a lunatic's estate, it is he alone who can, with the permission of the Court, alienate any portion of it. The Court has no power to do so. 1919 Lah 45 (45) [A I R V 6] : 1919 Pun Re. No. 88.

[3] The *tarwad* property is not the individual property of the *karnavan*. Hence, where a Court appoints a manager for a lunatic *karnavan*, he does not obtain any rights over the *tarwad* property. ('12) 23 Mad L Jour 706 (711) (DB).

[4] Application for permission to alienate property of lunatic—Determination by Judge of question whether lunatic or third party was entitled to property is not necessary. (1900) 4 Cal W N 526 (526) (DB).

[5] Manager's sale of lunatic's property without order of Court is void. 1920 Lah 421 (422) [AIR V 7] : 1 Lah 109 (DB).

[6] Sale by the certified guardian without Court's permission is not binding on the lunatic's son's shares. 1916 Oudh 206 (207) [AIR V 3].

[7] In the case of a manager of a lunatic appointed under this Act, although he may have been *de facto* manager of the family property, he can only make a valid alienation in accordance with the provisions of the Act. ('98) 20 Bom 150 (153, 154) (DB). (Hindu woman having lunatic husband and minor sons appointed guardian of lunatic — Woman also *de facto* guardian of family—Mortgage of family property by woman without Court's permission—Mortgage held was invalid as regards lunatic's interest.) \* ('13) 14 Mad L Tim 489 (489) (DB).

[8] If major comes under disability by reason of insanity, anybody, even if it is his wife, who does any acts on his behalf without being clothed with authority conferred by the Lunacy Act does not do such acts as lawful guardian of person under disability and is almost in the position of an intermeddler. 1933 Mad 686 (687) [AIR V 20] : 56 Mad 964 (DB).

[9] Committee appointed for management of lunatic's estate—Committee empowered to appropriate rent thereof towards its upkeep and maintenance of lunatic and his family—Committee incurring expenditure without previous sanction of Court—Expenses incurred on maintenance and education of lunatic's next heir with whom testator from whom lunatic got property desired lunatic to live and for maintenance of lunatic and his family — Expenses incurred being proper, Court has discretion to sanction them retrospectively. 1937 Mad 370 (374) [AIR V 24] : ILR (1937) Mad 571 (DB).

[10] An ordinary cultivating lease for an uncertain term is not a lease for any period exceeding five years and a manager of the estate of a lunatic has power to grant such a



(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

### OBJECTS AND REASONS

"We have amended clause 75 so as to allow a Court to annex conditions and restrictions to any permission granted to the manager of a lunatic to mortgage or lease immovable pro-

perty of such lunatic, and we have also empowered the Court to make or cause to be made such enquiries as it thinks fit, before granting such permission." —S. C. R.

### 76. Manager to furnish inventory and annual accounts.

(1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of immovable property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

### 77. Proceeding if accuracy of inventory or accounts is impugned.

If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

### 78. Payment into public treasury and investment of proceeds of estate.

All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

#### Section 75 — Note 1 (contd.)

lease without the permission of the Civil Court. (10) 8 Ind Cas 158 (159) (DB) (Cal).

[11] The guardian of a lunatic's property is not competent to maintain a suit after the lunatic's death for the recovery of arrears of rent which accrued subsequent to his death and therefore the Court has no jurisdiction to sanction the institution of proceedings by the guardian to recover such amount. The right of action would vest in the heir entitled to take the property after the death of the lunatic. 1943 Mad 265 (266) [AIR V 30]; 1954 Andhra 15 (16) [AIR V 41 C 10].

[12] An order by a Judge sanctioning suit by Receiver of lunatic's estate to recover arrears of rent is administrative and not judicial order. 1943 Mad 265 (265) [AIR V 30].

ger of a lunatic's estate and the accuracy is impugned under S. 77, Lunacy Act, some kind of an inquiry must be held under S. 77 and some record must be made of the inquiry and in passing orders reasons must be shown as the order passed is an appealable order and Appellate Court must be placed in a position of knowing what has moved the mind of the Judge in coming to the conclusion to which he came. 1936 Rang 51 (51, 52) [AIR V 23] (DB).

[2] Committee appointed to manage estate of lunatic — Direction to submit accounts half-yearly — Failure of Committee to file accounts for 21 years — Failure is highly reprehensible and can be condoned only under strong exceptional circumstances. 1937 Mad 370 (371, 374) [AIR V 24] : 1 L R (1937) Mad 571 (DB).

#### Section 77 — Note 1

[1] Where accounts are filed by the mana-

**79. Relative may sue for an account.**

Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

**OBJECTS AND REASONS**

"We have amended clause 79 by providing that no relative of a lunatic shall sue a manager appointed under this Chapter for accounts without the leave of the District

Court. The object of this amendment is to prevent managers from being harassed by frivolous suits."

—S. C. R.

**80. Removal of managers and guardians.**

(1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

**81. Penalty on manager for refusing to deliver accounts or property.**

The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

**82. Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.**

(1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to

**Section 79 — Note 1**

[1] Under S. 79, leave of Court appointing manager has to be obtained before any suit for accounts can be filed. But to sue surety, no such sanction is necessary. 1945 Mad 89 (90) [AIR V 32].

[2] When there are a large number of items of expenditure which are questioned and where there also may be necessity for enquiring into the amount of profits likely to have been realised from the estate, sanction to file a suit against the manager or his legal representative as the case may be, should be given. 1945 Mad 89 (90) [AIR V 32].

[3] A lunatic, for whose estate the District Judge appoints a manager cannot be said to be the principal of the manager of his estate within the meaning of Art. 89 of the Limitation Act. 1949 Oudh 51 (52) [AIR V 38 C 10]; 23 Luck 65 (DB).

**Section 80 — Note 1**

[1] The word "curator" is used in the Lunacy Act in the sense of a public curator appointed under the Succession (Property Protection) Act of 1841. Hence a person who has not been so appointed can be removed under S. 80. 1933 Lah 626 (627) [AIR V 20].

**Section 81 — Note 1**

[1] Even though the fine imposed on the guardian under S. 81 for his contumacious conduct can be recovered as if it were due under a decree of the Court, yet it is doubtful whether the order imposing the fine can be said to have the force of a decree within the meaning of Art. 2, Sch. 2, Court-fees Act. 1934 Lah 853 (853) [AIR V 21].

**Section 82 — Note 1**

[1] When an application is made under S. 82 alleging that the unsoundness of mind

believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

### 83. Appeals.

An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

## PART IV

### MISCELLANEOUS

#### CHAPTER VI

#### ESTABLISHMENT OF ASYLUMS

### 84. State Government may establish or license the establishment of asylums.

The [State Government] may establish or license the establishment of asylums at such places as it thinks fit <sup>a</sup>if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases.]

<sup>a</sup> *Inserted* by the Lunacy (Amendment) Act, 1922 (VI of 1922), S. 3

#### Section 82 — Note 1 (contd.)

of the lunatic has ceased, it is the duty of the Judge to proceed with the application without regard to the effect of enquiry on the matter in other proceedings pending in the Court. It would be most unfair to keep the lunatic's property under management or his person under guardianship if it could be established that he was no longer of unsound mind. 1925 Lah 553 (534) AIR V 12.

(2) The position of a District Judge under the provisions of the Lunacy Act is partly judicial and partly administrative. His function in making an inquisition into the state of mind of a person affected is clearly to satisfy himself as regards such state, and the relatives likely to be interested in the result of his action and to whom notices are issued, are not treated in any way as parties to legal proceedings but rather as *amici curiae*. They are allowed to be heard, but cannot as of right claim to call evidence. 1916 Oudh 165 (166) [AIR V 3] : 19 Oudh C.S. 353.

#### Section 83 — Note 1

(1) Where person has been adjudged lunatic upon inquisition held in irregular and improper proceedings, any person who is relative and has a right to see that the alleged lunatic's estate and liberty are dealt with according to law, has a right of appeal. 1927 Cal 636 (641) [AIR V 14] : 54 Cal 836 (DB).

(2) Where on an application by the wife and son of a person, such person was found to

be of unsound mind by the District Court and the wife was appointed as guardian of the lunatic, held that the daughters of the lunatic who were served with a notice and appeared at the hearing of the application and took part in the proceedings were entitled to appeal against the order of the District Court. (82) 8 Cal 263 (264) (DB).

3. An order passed under S. 77, Lunacy Act, simply to the effect that the accounts were passed implies that the objections to the accounts were rejected. An appeal lies against such order under S. 83. 1936 Rang 51 (51) [AIR V 23] (DB).

4. An order appointing a guardian of the property of a lunatic is appealable. 141 1911 Pun L.R. No. 28, p. 153 (154).

5. Court appointing guardian has power by implication to order custody of person of lunatic to guardian. Such order is appealable. 1934 Mad 724 (724, 725) [AIR V 21] : 58 Mad 252 (DB).

6. An appeal lies against an order of the District Court granting permission to the manager of the estate of a lunatic to alienate property belonging to the lunatic. 1900 4 Cal W.N. 526 (526) (DB).

7. Under S. 83 an appeal lies against an order made under Ch. V of the Act. Section 83 does not enumerate the orders which alone are appealable but makes all orders passed under Ch. V appealable to the High Court. 1949 Nag 108 (109) [AIR V 36 C. 38] : 1 L.R. (1949) Nag 465 (DB).

**\*[84A. Power to cancel licence if provision for curative treatment is insufficient.]**

If in any licensed asylum no provision for curative treatment has been made, or the <sup>^</sup>[State Government] considers that the provision made is insufficient, the State Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the <sup>^</sup>[State Government] may revoke licence.]

[a] *Inserted* by the Lunacy (Amendment) Act, 1922 (VI of 1922), S. 4.

**\*[85. Provision for admission of lunatics in asylums outside a State.]**

The Magistrates or Courts exercising jurisdiction in any <sup>^</sup>[State] may send lunatics or any class of lunatics to any asylum situate in any other <sup>^</sup>[State] in accordance with any general or special order<sup>b</sup> of the <sup>^</sup>[State Government] made in that behalf with the consent of the <sup>^</sup>[State Government] of such other State.]

[a] *Substituted* for original section by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I. [b] For notifications by the Governor-General in Council under this section as it stood originally, *See* General Statutory Rules and Orders Vol. IV, pp. 344-345.

## CHAPTER VII

### EXPENSES OF LUNATICS

**86. Payment of cost of maintenance in licensed asylums in certain cases by Government.**

(1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12.

**87. Application of property in the possession of a lunatic found wandering.**

Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

**88. Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.**

If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain

**Section 88 — Note 1**

[1] Under S. 88, the authority making a reception order under S. 15 has to apply to the High Court or the District Court for an order for the payment of the cost of maintenance of the lunatic. Such authority cannot pass such order itself. (1938) 40 Pun L R 496 (497).

[2] If the father, as a manager of the joint Hindu family is liable to maintain his son as a member of the family, he is a person legally

bound to maintain his lunatic son. It does not matter for the purposes of S. 88 whether under the Hindu Law his liability to maintain is limited to the extent of the joint family property in his hands. 1927 Bom 91 (93) [AIR V 14] : 51 Bom 120 (DB).

[3] The father-in-law in a joint Hindu family is liable to pay the cost of maintenance of his lunatic daughter-in-law. 1930 Bom 319 (319) [AIR V 17] (DB).

him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

### STATE AMENDMENTS

#### GUJARAT

Same as that given under Maharashtra.

#### MADRAS

In section 88, for the words and figures "on a reception order made under section 14, section 15 or section 17", the words and figures "on a reception order made under sections 7, 10, 14, 15 or 17 or on an order made under section 8 or 16" and for the words "authority which made the reception order" the words "authority which made the reception or other order aforesaid" shall be *substituted*.

—Madras Act XV of 1938, S. 3 [25-10-1938]

#### MAHARASHTRA

In its application to the State of Bombay, in section 88—

- (i) after the words "has the means to maintain him", the words "or if any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be *inserted*;
- (ii) the words "or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be *deleted*;
- (iii) after the word "resides," the words "or the local authority liable for the cost of his maintenance is constituted" shall be *inserted*;
- (iv) at the end of the marginal note, the following words shall be *added*, namely:—  
"or by local authority liable for such costs."

—Bomb. Act XV of 1936, S. 2 (1) [27-11-1936]

### 89. Order of Court and enforcement thereof.

(1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

### STATE AMENDMENTS

#### GUJARAT

Same as that given under Maharashtra.

#### MADRAS

In sub-section (1) of section 89, for the words "may make an order for the recovery of the cost of maintenance of such lunatic together with the costs of the application out of such estate or from such person" the following words shall be *substituted*, namely:—

"may make an order for the recovery of the whole or any portion of the cost of maintenance of such lunatic and of the costs of the application, out of such estate or from such person :

Provided that an order directing recovery out of such estate shall be made only after making due allowance for the needs of the wife, children and other dependents, if any, of the lunatic."

—Madras Act XV of 1938, S. 4 [25-10-1938].

#### Section 89 — Note 1

[1] Under S. 89, the Court has to determine whether the person legally bound to maintain the lunatic has the means to maintain him. The word "means" in the expression "means to maintain" has no relation to their source. Thus, if there is a person legally bound to

maintain the lunatic and if he has the means to maintain him with or without reference to the joint family property, under the Lunacy Act, the Court can make an order for the costs of his maintenance in the asylum. 1927 Bom 91 (93) [AIR V 14] : 51 Bom 120 (DB).

**MAHARASHITRA**

In its application to the State of Bombay, in section 89—

(i) in sub-section (1).

(a) after the words "such lunatic" where they occur for the *second* time, the words "or that any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be *inserted*;

(b) after the words "such person", the words "or from such local authority" shall be *added*;

(c) at the end, the following proviso shall be *added* namely :—

"Provided that no order for the recovery of the cost of maintenance of such lunatic from a local authority shall be made if he has an estate applicable to his maintenance or if there is any person legally bound, and having the means, to maintain him."

(ii) in sub-section (2), after the word "person" the words "or the local authority" shall be *inserted*.  
—Bombay Act XV of 1936, S. 2 (2) [27-11-1936].

**\*[89A. Fixation of cost of maintenance.**

(1) In computing the amount payable on account of the cost of maintenance of lunatics detained in any asylum for the cost of whose maintenance any <sup>a</sup>[State Government] is liable, charges may be included on account of the upkeep of the asylum and of the capital cost of establishment thereof.

(2) In the case of any such lunatic under detention immediately before the <sup>b</sup>commencement of Part III of the Government of India Act, 1935, the amount payable by any <sup>a</sup>[State Government] on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the Governor-General in Council in force immediately before that date and applicable to his case.]

[a] *Substituted* for S. 89A, by A. O., 1937. [b] Part III of the Government of India Act, 1935 came into force on 1-4-1937.

**\*[89B. Incidence of costs of maintenance payable by Government.**

(1) When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable—

(a) in the case of a lunatic not domiciled in <sup>b</sup>[India] by the <sup>a</sup>[State Government] of the <sup>a</sup>[State] in which the reception order or the order under section 25, as the case may be, was made; and

(b) in the case of a lunatic domiciled in <sup>b</sup>[India] by the <sup>a</sup>[State Government] of the <sup>a</sup>[State] in which the lunatic has last resided for a period of five years before the reception order or the order under section 25, as the case may be, was made; or, if the lunatic has not been resident in any one <sup>a</sup>[State] for such period, by the <sup>a</sup>[State Government] of the <sup>a</sup>[State] in which such order was made.

<sup>c</sup>[(2) \* \* \* \* \* ]

[a] *Inserted* by the Lunacy (Amendment) Act, 1922 (VI of 1922), S. 5. [b] *Substituted* for "the States" by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [c] Sub-section (2) was *omitted* by A. O., 1937.

**SECTION 89-C****STATE AMENDMENT****PUNJAB**

After S. 89B *insert* the following new section, namely :—

"89-C. *Exemption of cost of maintenance.*—Notwithstanding any other provisions of this Act, the State Government may, by rules prescribed, authorise the reception, detention or treatment of any lunatic who is unable or becomes unable to meet his cost of maintenance in any asylum."  
—Punj. Act XXXVII of 1956, S. 2 [17-10-1956].

**90. Saving of liability of relatives to maintain lunatic.**

The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

## CHAPTER VIII

### RULES

#### 91. Power of State Government to make rules.

(1) \*[\* \* \*] The <sup>A</sup>[State Government] may make rules for all or any of the following purposes, namely :—

- (a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court \*[\* \* \*];
- (b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;
- (c) to regulate the <sup>a</sup>[detention], care, treatment and discharge of criminal lunatics;
- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another;
- (e) to regulate the transfer of criminal lunatics to asylums;
- (f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government;
- (g) to prescribe the <sup>d</sup>[Government asylums] within the province to which lunatics from any area or any class of lunatics shall be sent;
- (h) to prescribe conditions subject to which asylums may be licensed ;
- (i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section, the <sup>A</sup>[State Government] may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

[a] The words "Subject to the control of the Governor-General in Council" were *omitted* by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I. [b] The words "for a Part A State" were *omitted* by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. (1-4-1951). [c] *Substituted* for "confinement" by the Repealing and Amending Act, 1923 (XI of 1923), S. 2 and Sch. I. [d] *Substituted* for "asylums established by Government", by A. O. 1937.

### STATE AMENDMENT

#### MADRAS

In sub-section (1) of section 91, after clause (e), the following clause shall be *inserted*, namely :—

"(ee) to prescribe the conditions subject to which lunatics may be discharged temporarily under section 33-A;" — Madras Act XV of 1938, S. 5 [25-10-1938].

#### 92. Publication of rules.

All rules made under section 91 shall be published in the <sup>A</sup>[Official Gazette], and shall thereupon have effect as if enacted in this Act.

## CHAPTER IX

### SUPPLEMENTAL PROVISIONS

#### 93. Penalty for improper reception or detention of lunatic.

Any person who—

- (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or
- (b) for gain detains two or more lunatics in any place not being an asylum, shall be punishable with imprisonment which may extend to two years or with fine or with both.

#### Section 91 — Note 1

[1] Rule 18 (ii) which prescribes the fees for maintenance is not ultra vires in any way. 1927 Bom 91 (93) [AIR V 14] : 51 Bom 120 (DB).

[2] The words 'District Funds' in R. 185

of the rules framed by the Punjab Govt. under Lunacy Act, S. 91 (1) do not include funds of the Small Town Committee. 1934 Lah 148 (149) [AIR V 21] : 15 Lah 480.

**94. Provision as to bonds.**

The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds taken under this Act.

**95. Pension of lunatic payable by Government.**

(1) When any sum is payable in respect of pay, pension, gratuity, or other similar allowance to any person <sup>a</sup>[by the Central Government or any <sup>A</sup>[State] Government] and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof, as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance.

(2) <sup>b</sup>[The <sup>c</sup> \* \* \* Government concerned] shall be discharged of all liability in respect of any amounts paid in accordance with this section.

[a] *Substituted* for "by the Secretary of State or any Government in British India", by A. C. A. O., 1948. [b] *Substituted* for "The Secretary of State for India in Council" by A. O., 1937. [c] The words "Secretary of State or, as the case may be, the" were omitted by A. C. A. O., 1948.

**96. Use of forms in Schedule.**

Subject to any rules, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

**97. Protection to persons acting under Act.**

No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

**98. Power to give effect to warrants and orders of certain Courts outside India.**

Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of <sup>A</sup>[India] <sup>b</sup>[established or continued by the Central Government].

[a] *Substituted* for "the States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. I (4-1951). [b] *Substituted* for "in the exercise of jurisdiction conferred by Government or the Central Government or the Crown Representative or by the law of Burma", by the Repealing and Amending Act, 1957 (XXXVI of 1957), S. 3 and Sch. II [17-9-1957].

**99. Power to make rules for reception of lunatics received from outside India.**

The <sup>A</sup>[State Government] may make rules<sup>a</sup> regulating the procedure for the reception and detention in asylums in the <sup>A</sup>[State] of lunatics whose reception and detention are provided for by section 98.

[a] For rules made by the Governor-General in Council under this section as it originally stood, see General Statutory Rules and Orders, Vol. IV, pp. 345-352.

**100. Orders under repealed Acts.**

(1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858<sup>a</sup> for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858,<sup>a</sup> before the commencement of this Act as if the order had



been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

[a] *Repealed* by this Act.

**100A.** Ranchi European Mental Hospital. [*Repealed by A. L. O., 1950.*]

**101.** Repeal of enactments. [*Repealed by the Second Repealing and Amending Act, 1914 (XVII of 1914), S. 3 and Sch. II.*]

## SCHEDULE I

### FORMS

(See section 96)

### FORM 1

#### APPLICATION FOR RECEPTION ORDER

(See sections 5 and 6.)

In the matter of A. B. [a], residing at \_\_\_\_\_, by occupation \_\_\_\_\_, son of \_\_\_\_\_; a person alleged to be a lunatic.

To \_\_\_\_\_ Presidency Magistrate, for

\_\_\_\_\_ [or District Magistrate of

\_\_\_\_\_, or Sub-Divisional Magistrate of

\_\_\_\_\_ or Magistrate specially empowered under Act IV of 1912 for \_\_\_\_\_].

The petition of C. D. [b], residing at \_\_\_\_\_, by occupation \_\_\_\_\_, son of \_\_\_\_\_, in the town of \_\_\_\_\_ [or, sub division of \_\_\_\_\_ in the district of \_\_\_\_\_].

1. I am \_\_\_\_\_ [b] years of age.

2. I desire to obtain an order for the reception of A. B. as a lunatic in the asylum of \_\_\_\_\_ situate at [c].

3. I last saw the said A. B. at \_\_\_\_\_ on the \_\_\_\_\_ [d] day of \_\_\_\_\_

4. I am the \_\_\_\_\_ [e] of the said A. B.

[or if the petitioner is not a relative of the patient state as follows.]

I am not a relative of the said A. B. The reasons why this petition is not presented by a relative are as follows : [State them].

The circumstances under which this petition is presented by me are as follows : [State them].

5. The persons signing the medical certificates which accompany the petition are [f].

6. A statement of particulars relating to the said A. B. accompanies this petition.

7. [If that is the fact.] An application for an inquiry into the mental capacity of the said A. B. was made to the \_\_\_\_\_ on the \_\_\_\_\_ and a certified copy of the order made on the said petition is annexed hereto.

[Or if that is the fact.]

No application for an inquiry into the mental capacity of the said A. B. has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C. D.

The statements contained or referred to in paragraphs \_\_\_\_\_ are true to my knowledge ; the other statements are true to my information and belief.  
(Sd.) C. D.

**Dated**

*Statement of particulars*

*[If any of the particulars in this statement is not known, the fact to be so stated.]*

The following is a statement of particulars relating to the said A. B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang, cocaine or other intoxicant.

[The statements contained or referred to in paras. \_\_\_\_\_ are true to my knowledge. The other statements are true to my information and belief.]

*[Signature by person making the statement.]*

[a] Full name, caste and titles. [b] Enter the number of completed years. The petitioner must be at least eighteen or twenty-one whichever is the age of majority under the law to which the petitioner is subject. [c] Insert full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum. [d] A day within 14 days before the date of the presentation of the petition is requisite. [e] Here state the relationship with the patient. [f] Here state whether either of the persons signing the medical certificates is a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

**FORM 2**

**RECEPTION ORDER ON PETITION**

(See sections 7, 10.)

I, the undersigned E. F., being a Presidency Magistrate of \_\_\_\_\_ [or the District Magistrate of \_\_\_\_\_ or the Sub-Divisional Magistrate of \_\_\_\_\_ or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under Act IV of 1912] upon the petition of C. D., of [a] in the matter of A. B., [a] a lunatic, accompanied by the medical certificates of G. H., a medical officer, and of J. K., a medical practitioner [or medical officer], under the said Act, hereto, annexed, hereby authorise you to receive the said A. B., into your asylum. And I declare that I have [or have not] personally seen the said A. B., before making this order.

(Sd.) E. F.

(Designation as above.)

To [b]

[a] Address and description. [b] To be addressed to the officer or person in charge of the asylum.

## FORM 3

## MEDICAL CERTIFICATE

(See sections 18, 19.)

In the matter of A. B. of [a] in the town of [or the sub-division of] in the district of [an alleged lunatic,

I, the undersigned C. D., do hereby certify as follows :—

1. I am a gazetted medical officer [or a medical practitioner declared by Government to be medical officer under Act IV of 1912] a holder of [b] [or declared by State Government to be a medical practitioner under Act IV of 1912] and I am in the actual practice of the medical profession.

2. On the [ ] day of 19 [ ] at [c] in the [town village] of [or the sub-division of] in the district of [ ] (Separately from any other practitioner) [d], I personally examined the said A. B., and came to the conclusion that the said A. B., is a lunatic and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz. :—

(a) Facts indicating insanity observed by myself, viz. :—

(b) Other facts (if any) indicating insanity communicated to me by others, viz. : *Here state the information and from whom.*

(Sd.) C. D.

(Designation as above.)

[a] *Insert* residence of patient. [b] *Insert* qualification to practise medicine and surgery registrable in the United Kingdom. [c] *Insert* place of examination. [d] *Omit* this where only one certificate is required.

## FORM 4

## RECEPTION ORDER IN CASE OF LUNATIC SOLDIER

(See section 12.)

Whereas it appears to me that A. B., a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A. B., into your asylum.

(Sd.) E. F.

(Administrative Medical Officer.)

To [a]

[a] To be addressed to the person in charge of an asylum duly authorised by Government to receive lunatic Europeans subject to the Army Act.

## FORM 5

RECEPTION ORDER IN CASE OF WANDERING OR DANGEROUS LUNATICS OR LUNATICS NOT UNDER PROPER CONTROL OR CRUELLY TREATED  
(SENT TO AN ASYLUM ESTABLISHED BY GOVERNMENT)

(See sections 14, 15, 17.)

I, C. D., Presidency Magistrate of [or Commissioner of Police for] [or the District Magistrate of] [or the Sub-divisional Magistrate of] or a Magistrate specially empowered by Government under Act IV of 1912] having caused A. B., to be examined by E. F., a Medical Officer under the Indian Lunacy Act, 1912, and being satisfied that A. B. [describing him] is a lunatic who was wandering at large [or is a person dange-

rous by reason of lunacy] [or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B., into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the Officer in charge of the asylum at

### FORM 6

#### SAME WHEN SENT TO A LICENSED ASYLUM

I, C. D., [as above down to "care and treatment"] and being satisfied with the engagement entered into in writing by G. H. of [here insert address and description] who has desired that the said A. B. may be sent to the asylum at [here insert description of asylum and name of the person in charge] to pay the cost of maintenance of the said A. B., in the said asylum, hereby authorize you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the person in charge of the asylum at

### FORM 7

#### BOND ON THE MAKING OVER OF A LUNATIC TO THE CARE OF RELATIVE OR FRIEND

(See sections 14, 15, 17.)

Whereas A. B., son of                      inhabitant of                      has been brought up before C. D., a Presidency Magistrate for the town of                      [or Commissioner of Police for                      ] [or the                      District                      Sub-Divisional                      Magistrate of                      , or a Magistrate of the first class specially empowered under Act IV of 1912] and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E. F., son of                      inhabitant of                      , have applied to the Magistrate [or Commissioner of Police], that the said A. B. may be delivered to my care:

I, E. F., abovenamed hereby bind myself that on the said A. B. being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to <sup>A</sup>[the Government] <sup>A</sup>[\* \* \*], the sum of rupees

Dated this                      day of                      19                      .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to <sup>A</sup>[the Government] <sup>A</sup>[\* \* \*], the sum of rupees                      .

Dated this                      day of                      19                      .

(Signature.)

[a] The words "Emperor of India" were omitted by A. C. A. O., 1948.

## FORM 8

BOND ON THE DISCHARGE OF A LUNATIC FROM AN ASYLUM ON THE  
UNDERTAKING OF RELATIVE OR FRIEND TO TAKE DUE CARE

(See section 33.)

Whereas A. B., son of \_\_\_\_\_, inhabitant of \_\_\_\_\_, is a lunatic who is now detained in the asylum at \_\_\_\_\_ under an order made by C. D., a Presidency Magistrate for the town of \_\_\_\_\_ [or Commissioner of Police for \_\_\_\_\_] [or the \_\_\_\_\_ District \_\_\_\_\_ Sub-Divisional Magistrate of \_\_\_\_\_, or a Magistrate of the first class specially empowered under Act IV of 1912] under section 14 [or section 15] of Act IV of 1912, and whereas L. E. F., son of \_\_\_\_\_, inhabitant of \_\_\_\_\_, have applied to the said Magistrate [or Commissioner of Police] that the said A. B., may be delivered to my care and custody :

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to <sup>A</sup> [the Government], \_\_\_\_\_ the sum of rupees \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

(Sd.) E. F.

(Where a bond with sureties is to be executed add).—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to <sup>A</sup> [the Government] \_\_\_\_\_ the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

(Signature.)

[a] The words "Emperor of India" were omitted by A. C. A. O., 1948.

**SCHEDULE II.**—Enactments Repealed. [*Repealed by the Second Repealing and Amending Act, 1914 (XVII of 1914), S. 3 and Sch II.*]

[THE] LUSHAI HILLS DISTRICT (CHANGE OF  
NAME) ACT, 1954

(ACT XVIII OF 1954)

[The Act printed here is as on 1-8-1960.]

## CONTENTS

## SECTIONS

1. Short title and commencement.
2. Lushai Hills District to be known as Mizo District.

3. Amendment of the Sixth Schedule to the Constitution.
4. Reference to Lushai Hills District to be construed as reference to Mizo District.

## STATEMENT OF OBJECTS AND REASONS

"The Lushai Hills District is one of the six autonomous districts in the tribal areas of Assam specified in Part A of the Table appended to Paragraph 20 of the Sixth Schedule to the Constitution. The district is largely inhabited by tribes who are collectively known as "Mizos"—"Lusei" being one of these tribes.

There has, therefore, been a demand that the district should be renamed "Mizo District"; the Hills will continue to be called 'Lushai Hills'—The present Bill is intended to achieve this purpose."

—Gaz. of Ind., 1954, Extra., Pt. II-S. 2, page 2.

[THE] LUSHAI HILLS DISTRICT (CHANGE OF  
NAME) ACT, 1954(ACT XVIII OF 1954)<sup>a</sup>

[29th April, 1954.]

*An Act to change the name of the Lushai Hills District.*

BE it enacted by Parliament as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1954, Extra., Pt. II-S. 2, p. 2.

**1. Short title and commencement.**

(1) This Act may be called THE LUSHAI HILLS DISTRICT (CHANGE OF NAME) ACT, 1954.

(2) It shall come into force on such date<sup>a</sup> as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 1-9-1954, see S. R. O. 2832, D/- 1-9-1954 published in Gaz. of Ind., 1954, Extra., Pt. II-S. 3, page 1443.

**2. Lushai Hills District to be known as Mizo District.**

The tribal area in Assam now known as the Lushai Hills District shall, as from the commencement of this Act, be known as the Mizo District.

*Note.*—Lushai Hills District is largely inhabited by tribes who are collectively known as "Mizo", "Lusei" is one of these tribes. As a result of the demand of the people, the District is now renamed as "Mizo District," the Hills of the area will, however, continue to be called "Lushai Hills".**3. Amendment of the Sixth Schedule to the Constitution.**

In the Sixth Schedule to the Constitution, in paragraph 20, —

(a) after sub-paragraph (2), the following sub-paragraph shall be inserted, namely :—

“(2A) The Mizo District shall comprise the area which at the commencement of this Constitution was known as the Lushai Hills District.” ;

(b) in sub-paragraph (3), after the words “United Khasi-Jaintia Hills District”, the words “and the Mizo District” shall be inserted ; and

(c) in Part A of the table, for the words “The Lushai Hills District”, the word “The Mizo District” shall be substituted.

**4. Reference to Lushai Hills District to be construed as reference to Mizo District.**

Any reference to the Lushai Hills District in any law, instrument or other document shall, unless the context otherwise requires, be construed as a reference to the Mizo District.

[THE] MADHYA BHARAT TAXES ON INCOME  
(VALIDATION) ACT, 1954

(ACT XXXVIII of 1954)

[The Act printed here is as on 15-8-1960.]

## CONTENTS

## SECTIONS

1. Short title.

2. Definitions.

3. Validation of action taken in con-

nection with the levy, assessment and collection of certain taxes on income.

4. Continuance of pending proceedings.

## STATEMENT OF OBJECTS AND REASONS

"Section 13 of the Finance Act, 1950, while providing for the repeal in Part B States of laws relating to income-tax, super-tax and tax on profits of business saved the operation of the local laws in so far as they related to the levy, assessment and collection of such taxes for any period prior to the 31st day of March, 1949. The section, however, provided that the levy and collection of any such arrears should be made by the corresponding authorities under the Indian Income Tax Act,

1922. This latter provision was overlooked by the Madhya Bharat Government which continued to recover the arrears with the aid of their own officers. The present Bill seeks to validate such levy and collection and also provides for the continuance and completion of pending proceedings by State authorities in accordance with the provisions of the relevant State laws."

—Gaz. of Ind., 1954, Extra., Pt II-Sec. 2, page 406.

## [THE] MADHYA BHARAT TAXES ON INCOME (VALIDATION) ACT, 1954 (ACT XXXVIII OF 1954)<sup>a</sup>

[2nd October, 1954.]

*An Act to validate the levy, assessment and collection in the State of Madhya Bharat of certain taxes on income and on profits of business due in respect of the periods referred to in sub section (1) of section 13 of the Finance Act, 1950.<sup>b</sup>*

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons see Gaz. of Ind., 1954, Extra., Pt. II-Sec. 2, page. 406. [b] Act XXV of 1950, for text of S. 13 of that Act see Vol. VII of this Manual.

### 1. Short title.

This Act may be called THE MADHYA BHARAT TAXES ON INCOME (VALIDATION) ACT, 1954.

### 2. Definitions.

In this Act, unless the context otherwise requires,—

- (a) 'Finance Act' means the Finance Act, 1950;
- (b) 'relevant Madhya Bharat law' means any of the following laws which may be applicable in the circumstances of a particular case, that is to say,—
  - (i) The Indore Industrial Tax Rules, 1927;
  - (ii) The Indore Excess Profits Duty Order, 1944;
  - (iii) The Gwalior War Profits Ordinance, Samvat 2001; and
  - (iv) any law in force immediately before the commencement of the Finance Act in that part of the State of Madhya Bharat which corresponds to the territory comprised in the former Indian State of Ratlam, in so far as such law relates to a tax on profits of business;

#### Preamble — Note 1

[1] The Madhya Bharat Taxes on Income (Validation) Act of 1954 was not *ultra vires* the powers of the Legislature to enact. The power to pass a validating Act to legalize executive action is implicit in the power to make laws on any item in the legislative lists and hence the Act which validates the assessments made in Madhya Bharat by wrong authorities cannot be challenged on the ground of absence of power in the legislature to enact it. 1959 Madh Pra 195 (200) [AIR V 46 C 63] (DB).

[2] The Madhya Bharat Taxes on Income (Validation) Act of 1954 is not void under Art. 14 of the Constitution on the ground that it has discriminated the Madhya Bharat as-

sesses from the other assesses in Part B States. The classification of those assesses as a separate class is a reasonable classification inasmuch as the differentia on which it had been based had a reasonable relation to the classification. 1959 Madh Pra 195 (201) [AIR V 46 C 63] (DB).

#### Section 2 — Note 1

[1] Though the Indore Industrial Tax (Amendment) Rules of 1949 are not referred to in S. 2 of the Act as the "relevant Madhya Bharat law" those rules cannot be excluded from that expression. Since those rules are in the nature of an amending Act the modifications made by them have become a part and parcel of the original rules and hence the

(c) 'relevant period' means either of the periods referred to in sub-section (1) of section 13 of the Finance Act, according as the tax is a tax on income or a tax on profits of business.

### 3. Validation of action taken in connection with the levy, assessment and collection of certain taxes on income.

Notwithstanding anything contained in the first proviso to sub-section (1) of section 13 of the Finance Act, all proceedings taken, assessments made and other acts and things done (including orders made) by or before any officer, authority, tribunal or Court acting or purporting to act under the relevant Madhya Bharat law in connection with the levy, assessment and collection of any tax due under any such law in respect of the relevant period shall be valid and shall be deemed always to have been valid, and shall not be called in question on the ground only that such proceedings were not taken, assessments were not made or acts or things were not done by or before the corresponding officer, authority, tribunal or Court referred to in the said proviso.

### 4. Continuance of pending proceedings.

If, immediately before the commencement of this Act, any proceedings of the nature referred to in section 3 are pending before any officer, authority, tribunal or Court acting or purporting to act under the relevant Madhya Bharat law, such proceedings may, notwithstanding anything contained in the first proviso to sub-section (1) of section 13 of the Finance Act, be continued and completed in accordance with the provisions of the relevant Madhya Bharat law, and the provisions of the said proviso shall not apply, and shall be deemed never to have applied, in relation to any such proceedings.

## [THE] MAINTENANCE ORDERS ENFORCEMENT ACT, 1921 (ACT XVIII of 1921)

[The Act printed here is as on 15-5-1960.]

### CONTENTS

#### SECTIONS

1. Short title and extent.
2. Definitions.
3. Declaration of reciprocal arrangements.
4. Registration in India of maintenance orders made in the reciprocating territories.
5. Transmission of maintenance orders made in India.
6. Power of summary Courts to make provisional maintenance orders against persons resident in reciprocating territories.

7. Power of Court of summary jurisdiction to confirm maintenance order made out of India.
8. Enforcement of maintenance orders.
9. Payment of charges for transmission of sums awarded as maintenance and other costs and charges.
10. Proof of documents signed by officers of Court.
11. Depositions to be evidence.
12. Rule-making power.

#### Section 2 — Note 1 (*contd.*)

express reference made to the Industrial Tax Rules of 1927 in the section should be construed as a reference to the Rules of 1949 after the modification. 1959 Madh Pra 195 (200) [AIR V 46 C 63] (DB).

#### Section 3 — Note 1

[1] The Indore Industrial Profits (Amendment) Rules of 1949, fall within the expression "the relevant Madhya Bharat law" although it is not expressly referred to as such in S. 2 and hence proceedings which had been taken by any officer or authority of the

Madhya Bharat Government, purporting to act under those Rules, in connection with an assessment will be cured by reason of the provisions of Ss. 3 and 4 of the defect or illegality arising on the ground that the officer or authority had no jurisdiction in the matter after the enactment of S. 13 of the Finance Act of 1950. 1959 Madh Pra 195 (199, 200) [AIR V 46 C 63] (DB).

#### Section 4 — Note 1

[1] See Note under S. 3.



## STATEMENT OF OBJECTS AND REASONS

"The Imperial Conference of 1911 passed a resolution that, in order to secure justice and protection for wives deserted by their husbands and children who had been deserted by their legal guardians either in the United Kingdom or in any part of the Dominions, reciprocal legal provisions should be adopted in the constituent parts of the Empire in the interest of such destitute and deserted persons. As a result, the English Act (10 and 11 Geo. V, Ch. 33) [see the English Act printed, *post*.] was recently passed to facilitate the enforcement in England and Ireland of maintenance orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*. Section 12 of the Act empowers His Majesty to extend it by Order in Council to those Dominions and Protectorates which make reciprocal legal provisions. The object of the present Bill, which generally follows the lines of the English Act, is to make such reciprocal provisions by facilitating the enforcement in British India of maintenance orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*. That is, read with the English Act the present Bill allows the enforcement of orders for the maintenance of wives and children deserted in England on persons liable under such orders who have come to British India, and *vice versa* for the enforcement of maintenance orders in favour of wives and children deserted in British India by those liable to support them if such persons have gone to England.

The Bill makes provision for the following classes of cases : (1) Where after the making of a maintenance order the husband (or other person liable for maintenance) has gone from British India to another part of the Empire in which reciprocal legislation is in force ; (2) Where the husband (or other person liable has gone from British India to a reciprocating part of the Empire before the making of any

maintenance order ; (3) Where after the making of a maintenance order in a reciprocating part of the Empire the husband (or other person liable has come to British India ; and (4) Where before the making of a maintenance order in reciprocating part of the Empire the husband (or other person liable has come to British India.

As regards cases falling under head (1), clause 5 enables an order made by a Court in British India to be transmitted to the Courts in the other reciprocating part of the Empire to be registered and enforced there. Similarly, clause 4, read with clause 8, enables an order made by a Court in a reciprocating part of the Empire, in cases falling under head (3), to be registered and enforced in British India. In cases falling under head (2), clause 6 authorises the making of a provisional order in the absence of the husband (or other person liable which will have no effect unless confirmed by a Court in the reciprocating country to which the husband has gone, and clause 7 deals with the opposite class of cases falling under head (4).

Sub-clauses (6) and (7) of clauses 6 and 7 (Sub-clause (7) was omitted by the Select Committee) provide for the variation and revocation of orders and for appeals. Clause 3 (2) enables reciprocity, similar to that for which the Bill provides in the case of parts of His Majesty's Dominions, to be established with such Indian States as may pass legislation for the enforcement in such States of orders made by British Indian Courts.

The procedure for enforcing orders registered in a High Court will be the same as that for an order originally obtained in the High Court, but for a Court of summary jurisdiction the method in which orders will be enforced has been left to be prescribed by rules."

—Gazette of India, 1921, Part V, page 5.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts III of 1951; XLVII of 1952.
- Adapted by A. O., 1937; A.C.A.O., 1948; A.L.O., 1950.
- Extended by LIX of 1949; XXX of 1950.

## [THE] MAINTENANCE ORDERS ENFORCEMENT ACT, 1921

(ACT XVIII OF 1921)\*

[5th October, 1921.]

*An Act to facilitate the enforcement in <sup>b</sup>[India] of Maintenance Orders made <sup>c</sup>[ <sup>d</sup> \* \* \* ] in <sup>e</sup>[reciprocating territories] ], <sup>f</sup>[ \* \* \* ] and vice versa.*

WHEREAS it is expedient to facilitate the enforcement in <sup>b</sup>[India] of Maintenance Orders made <sup>c</sup>[ <sup>d</sup> \* \* \* ] in <sup>e</sup>[reciprocating territories] ], <sup>f</sup>[ \* \* \* ] and vice versa; It is hereby enacted as follows : —

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1921, Pt. V, p. 5; and for Report of Select Committee, see *ibid*, 1921, Pt. V, p. 127.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

[b] *Substituted* for "Part A States and Part C States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [c] The words "in Part B States or in" were *substituted* for "in other parts of", by A. L. O. 1950. [d] The words "in Part B States or" were *omitted* by Act III of 1951, S. 3 and Sch. [1-4-1951]. [e] *Substituted* for "His Majesty's Dominion and Protectorates", by Maintenance Orders Enforcement (Amendment) Act, 1952 (XLVII of 1952), S. 2 [30-7-1952]. [f] The words "Acceding States and other Indian States" were *omitted* by A. L. O., 1950.

## 1. Short title and extent.

(1) This Act may be called THE MAINTENANCE ORDERS ENFORCEMENT ACT, 1921.

\*(2) It extends to the whole of India <sup>b</sup>[except the State of Jammu and Kashmir].

[a] *Substituted* for former sub-section (2), by A. L. O., 1950. [b] *Substituted* for "except Part B States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

## 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context, —  
 "Court of summary jurisdiction" means the Court of a Chief Presidency Magistrate or of a District Magistrate;

"dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in <sup>a</sup>[the reciprocating territory] in which the maintenance order is made;

[a] *Substituted* for "the part of His Majesty's Dominions", by Maintenance Orders Enforcement (Amendment) Act, 1952 (XLVII of 1952), S. 3 [30-7-1952].

### OBJECTS AND REASONS

"The words 'other than legitimate children' have been omitted from the definition of dependants, and the corresponding words of the English Act, i. e. 'other than an order of affiliation' have been inserted in the definition of 'maintenance order' so as to follow the wording of the English Act."

—S. C. R.

\*["India" means the territory of India excluding the State of Jammu and Kashmir;]

[a] *Inserted* by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

"maintenance order" means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

### OBJECTS AND REASONS

"The definition of 'maintenance order' has also been amplified to make it clear that such an order includes orders passed by Courts either in the exercise of civil or criminal jurisdiction."

—S. C. R.

"prescribed" means prescribed by rules made under this Act ;

"proper authority" means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which this Act applies; and

### OBJECTS AND REASONS

"Definition of 'proper authority' has been inserted, as it was considered to be incorrect to prescribe by rules the authority of the reciprocating territory, from which communications should be received. The laws passed, or to be passed, in such territories will provide for the proper authority for the transmission of communications."—S. C. R.

\*["reciprocating territory" means any country or territory outside India in respect of which this Act for the time being applies by virtue of a declaration under section 3.]

[a] *Substituted* for former definition, by Maintenance Orders Enforcement (Amendment) Act, 1952 (XLVII of 1952), S. 3 [30-7-1952].

• [ • • • • • ]

[a] Definition of 'States' was *omitted* by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

**\*[3. Declaration of reciprocal arrangements.**

If the Central Government is satisfied that legal provision exists in any country or territory outside India for the enforcement within that country or territory of maintenance orders made by Courts in India, the <sup>A</sup>[Central Government] may, by notification in the <sup>A</sup>[Official Gazette], declare<sup>b</sup> that this Act applies in respect of that country or territory and thereupon it shall apply accordingly.]

[a] *Substituted* for former section, by Maintenance Orders Enforcement (Amendment) Act, 1952 (XLVII of 1952), S. 4 [30-7-1952]. [b] For such declarations, *see* General Statutory Rules and Orders, Vol. V pp. 2 to 4. *See also* Gaz. of Ind. 1954, Extra., Pt. II-Sec. 3, p. 2165; Gaz. of Ind. 1955, Extra., Pt. II-Sec. 3, p. 1815, and Gaz. of Ind. 1955, Pt. II-Sec. 3, p. 2268.

**4. Registration in India of maintenance orders made in the reciprocating territories.**

(1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the Central Government, the Central Government shall send a copy of the order to the prescribed officer of a Court in <sup>A</sup>[India] for registration, and, on receipt thereof, the order shall be registered in the prescribed manner.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the Central Government, a Court of superior jurisdiction, be a High Court, and, if the Court was not, in its opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

[a] *Substituted* for "the States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951.]

**5. Transmission of maintenance orders made in India.**

Where a Court in <sup>A</sup>[India] has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the Court shall send to the <sup>A</sup>[Central Government], for transmission to the proper authority of that territory, a certified copy of the order.

[a] *Substituted* for "the States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951.]

**6. Power of summary Courts to make provisional maintenance orders against persons resident in reciprocating territories.**

(1) Where application is made to a Court of summary jurisdiction in <sup>A</sup>[India] for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if that person had wilfully neglected to attend the Court; but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to, and signed by, him.

**Section 6 — Note 1**

[1] The Act does not confer jurisdiction on Magistrates to award any sum they think fit as maintenance payable to wives and children who are in British India and whose husbands

are in England. Powers are limited by S. 488, Criminal P. C. (37) 1957 Mad W N 1127 (1127, 1128.)

(3) Where such an order is made, the Court shall send to the <sup>A</sup>[Central Government], for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, that Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order, but in any other case the depositions shall be sent to the <sup>A</sup>[Central Government] and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order:

Provided that, on the making of a varying or rescinding order, the Court shall send a certified copy thereof to the <sup>A</sup>[Central Government] for transmission to the proper authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

[a] *Substituted* for "the States," by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951.]

### OBJECTS AND REASONS

*"Marginal heading.* — The words 'of summary Courts' have been inserted in the marginal heading to make it clear that the making of provisional orders is confined to summary Courts.

*Sub-section (1).* — The words 'if such person had wilfully neglected to attend the Court' have been substituted for the words 'if a summons had been duly served on the person and he had failed to appear at the hearing,' to bring the wording of this sub-clause into conformity with the wording of section 488 of the Code of Criminal Procedure, 1898.

*Sub-section (6).* — The words 'or to which it was sent for confirmation' have been inserted after the words 'was confirmed' in the proviso to this sub-clause, as it is proposed that a Court, which has made a provisional order,

may vary or rescind that order after the taking of further evidence before the order has actually been confirmed in the reciprocating possession, and also that it may vary or rescind the order after it has been confirmed.

Sub-clause 7 of clause 6 has been omitted following the provisions of the maintenance sections in the Code of Criminal Procedure, 1898. There is no appeal from an order of maintenance under that Code, and this sub-clause would therefore be misleading. In the absence of any provision for such appeal, we do not consider it desirable that there should be an appeal in the cases dealt with under this clause, which are treated as analogous to maintenance cases dealt with under the Code of Criminal Procedure."

— S. C. R.

## 7. Power of Court of summary jurisdiction to confirm maintenance order made out of India.

(1) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until

### Section 7 — Note 1

[1] In a case where evidence before Indian Court cannot be tested by cross-examination and introduces matter not mentioned in evidence on which the provisional order is based, the order of the Magistrate for further evidence is desirable. 1928 Bom 117 (121) [AIR V 15] : 52 Bom 262 : 29 Cri L Jour 513 (DB).

[2] Evidence of desertion subsequent to

provisional order being relevant to question whether there has been real desertion, can be considered—S. 7 (4) obviously contemplates evidence of this kind. 1928 Bom 117 (121) [AIR V 15] : 52 Bom 262 : 29 Cri L J 513 (DB).

[3] Order confirming provisional order of maintenance of the Chief Presidency Magistrate is judicial and not merely an executive or administrative order. High Court can inter-

confirmed by a Court of summary jurisdiction in <sup>a</sup>[India], and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the <sup>a</sup>[Central Government], and it appears to the <sup>a</sup>[Central Government] that the person against whom the order has been made is resident in <sup>a</sup>[India], the <sup>a</sup>[Central Government] may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition, the Court shall issue such a summons and cause it to be served upon such person.

(2) A summons issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in <sup>a</sup>[India], confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just :

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order for the taking of any further evidence, the Court may for that purpose send a certified copy of the record to the <sup>a</sup>[Central Government] for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the <sup>a</sup>[Central Government] for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

[a] Substituted for "the States" by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

#### OBJECTS AND REASONS

"Sub-clause (4) of clause 7. — We are of opinion that the clause, as it stood, would perhaps not permit of the confirmation of a provisional order, made for example in the United Kingdom, for a sum greater than

Rs. 50 per mensem, which is the limit imposed by section 458 of the Code of Criminal Procedure, 1898. The limit for maintenance orders in the case of a wife in the United Kingdom is two pounds a week, and for a

#### Section 7 — Note 1 (contd.)

fere with such order in revision. Existence of the power of varying or rescinding order of confirmation, even under sub-s. (6) does not

exclude revisional powers of High Court. 1928 Bom 117 (119) [AIR V 15] : 52 Bom 262 : 29 Cri L Jour 513 (DB).

child one pound a week. It was considered desirable that it should be open to the Court to enforce provisional orders up to the full amount of provisional order, but not to increase the order beyond that amount. Amend-

ments to impose a limit as aforesaid have been made in this clause.

Provision has been made in sub-clauses (5) and (6) for the transmission of records in the manner as is provided in the proviso to sub-clause (6) of clause 6." — S. C. R.

## 8. Enforcement of maintenance orders.

(1) Subject to the provisions of this Act, where an order has been registered under this Act in a High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly.

(2) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

### OBJECTS AND REASONS

*Sub-section (1).*—"The words 'in the exercise of its civil jurisdiction' have been inserted after the words 'High Court' to make it clear that, except in the case of orders executed by Courts of summary jurisdiction, which will be orders for the payment of comparatively small amounts, the procedure in execu-

tion will be in accordance with the Code of Civil Procedure. The difference in execution procedure in the various High Courts necessitates a double procedure in the Bill so as to cover registration in High Court possessing only appellate jurisdiction."

—S. C. R.

## 9. Payment of charges for transmission of sums awarded as maintenance and other costs and charges.

A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court.

### OBJECTS AND REASONS

"A new clause 9 has been inserted, as we think that it is just to a wife or other person, in favour of whom a maintenance order is made, that such person should receive the full

amount awarded and not be debited with the costs of transmission, and other incidental charges. Such charges should be borne by the person against whom the order is made."

—S. C. R.

## 10. Proof of documents signed by officers of Court.

For the purposes of this Act, any document purporting to be signed by a judge or officer of a Court outside \*<sup>[India]</sup> shall, until the contrary is proved, be deemed to have been so signed without proof of the signature of judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is provided, be deemed to have been the proper officer of the Court to sign the document.

[a] Substituted for "the States," by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

## 11. Depositions to be evidence.

Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

**12. Rule-making power.**

The <sup>a</sup>[Central Government] may make rules<sup>a</sup> for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.

[a] *See* General Statutory Rules and Orders, Vol. V, pp. 4 to 7.

**[THE] MAINTENANCE ORDERS (FACILITIES FOR  
ENFORCEMENT) ACT, 1920**

(10 & 11 Geo. V, C. 33)

[The Act printed here is as amended up to and including (1949)  
12, 13 & 14 Geo. VI, c. 101.]

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**[THE] MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT)  
ACT, 1920**

(10 & 11 Geo. V, C. 33).<sup>a</sup>

[16th August, 1920.]

*An Act to facilitate the enforcement in England and Ireland of Maintenance Orders made in other part of His Majesty's Dominions and Protectorates and vice versa.*

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

[a] Section 7 of this Act is repealed in part by the Justices of the Peace Act, 1949 (12, 13 & 14 Geo. VI, c. 101.)

**NOTE.**—The Law Commission of India in its Fifth Report (British Statutes applicable to India), 1957, page 69, observes as follows : "This statute provides for the enforcement in the U. K. of maintenance orders made by any Court in any part of "His Majesty's dominions outside the U. K." The statute will remain enforceable in the U. K. even if we remove it from our statute book."

**A Bill** is introduced in the Rajya Sabha of the Indian Parliament seeking to repeal certain British statutes specified in the Schedule to the Bill, in so far as they extend to, and operate as part of the law of, India or any part thereof; this is one of the statutes specified in the said Schedule—See Rajya Sabha Bill No. XXIII of 1960.

For the operation of this statute in relation to India, and to persons and things in any way belonging to or connected with India, see the provisions of section 1 of the India (Consequential Provision) Act, 1949 (12, 13 & 14 Geo. VI, c. 92), the text of which is given in Vol. VIII of this Manual.

# **1. Enforcement in England and Ireland of maintenance orders made in His Majesty's dominions outside the United Kingdom.**

(1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court, in any part of His Majesty's dominions outside the United Kingdom to which this Act extends, and a certified copy of the order has been transmitted by the Governor of that part of His Majesty's dominions to the Secretary of State, the Secretary of State shall send a copy of the order to the prescribed officer of a Court in England or Ireland for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the Court in which it is so registered, and that Court shall have power to enforce the order accordingly.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was a Court of superior jurisdiction, be the Probate, Divorce and Admiralty Division of the High Court, or in Ireland the King's Bench Division (Matrimonial) of the High Court of justice in Ireland, and, if the Court was not a Court of superior jurisdiction, be a Court of summary jurisdiction.

# **2. Transmission of maintenance orders made in England or Ireland.**

Where a Court in England or Ireland has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in some part of His Majesty's dominions outside the United Kingdom to which this Act extends, the Court shall send to the Secretary of State for transmission to the Governor of that part of His Majesty's dominions a certified copy of the order.

# **3. Power to make provisional orders of maintenance against persons resident in His Majesty's dominions outside the United Kingdom.**

(1) Where an application is made to a Court of summary jurisdiction in England or Ireland for a maintenance order against any person, and it is proved, that that person is resident in a part of His Majesty's dominions outside the United Kingdom to which this Act extends, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent Court in such part of His Majesty's dominions as aforesaid.

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made, the Court shall send to the Secretary of State for transmission to the Governor of the part of His Majesty's dominions in which the person against whom the order is made is alleged to reside the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the



Court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, that Court or any other Court of summary jurisdiction sitting and acting for the same place shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

If upon the hearing of such evidence it appears to the Court that the order ought not to have been made, the Court may rescind the order, but in any other case the depositions shall be sent to the Secretary of State and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order: Provided that on the making of a varying or rescinding order the Court shall send a certified copy thereof to the Secretary of State for transmission to the Governor of the part of His Majesty's dominions in which the original order was confirmed, and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

#### **4. Power of Court of summary jurisdiction to confirm maintenance order made out of the United Kingdom.**

(1) Where a maintenance order has been made by a Court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends, and the order is provisional only and has no effect unless and until confirmed by a Court of summary jurisdiction in England or Ireland and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Secretary of State, and it appears to the Secretary of State that the person against whom the order was made is resident in England or Ireland, the Secretary of State may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the Court shall issue such a summons and cause it to be served upon such person.

(2) A summons so issued may be served in England or Ireland in the same manner as if it had been originally issued or subsequently endorsed by a Court of summary jurisdiction having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that these grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be con-

firmed, the Court may confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order for the taking of any further evidence, the Court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the order for the purpose of taking any further evidence, the Court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the Court confirming the order.

## **5. Power of Secretary of State to make regulations for facilitating communications between Courts.**

The Secretary of State may make regulations as to the manner in which a case can be remitted by a Court authorised to confirm a provisional order to the Court which made the provisional order, and generally for facilitating communications between such Courts.

## **6. Mode of enforcing orders.**

(1) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily ;

Provided that, if the order is of such a nature that if made by the Court in which it is so registered or by which it is so confirmed, it would be enforceable in like manner as an order of affiliation, the order shall be so enforceable.

(3) A warrant of distress or commitment issued by a Court of summary jurisdiction for the purpose of enforcing any order so registered or confirmed may be executed in any part of the United Kingdom in the same manner as if the warrant had been originally issued or subsequently endorsed by a Court of summary jurisdiction having jurisdiction in the place where the warrant is executed.

## **7. Application of Summary Jurisdiction Acts.**

The Summary Jurisdiction Act shall apply to proceedings before Courts of summary jurisdiction under this Act in like manner as they apply to proceedings under those Acts, [ \* \* \* ].

[a] Certain words were repealed by the Justices of the Peace Act, 1949 (12, 13 & 14 Geo. VI, C. 101), S. 46 (2) & Sch. VII, Part II.

## **8. Proof of documents signed by officers of Court.**

Any document purporting to be signed by a judge or officer of a Court outside the United Kingdom shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

## 9. Depositions to be evidence.

Deposition taken in a Court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends for the purposes of this Act, may be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

## 10. Interpretation.

For the purposes of this Act, the expression "maintenance order" means an order other than an order of affiliation\* for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and the expression "dependants" means such persons as that person is, according to the law in force in the part of His Majesty's dominions in which the maintenance order was made, liable to maintain, the expression "certified copy" in relation to an order of a Court means a copy of the order certified by the proper officer of the Court to be a true copy, and the expression "prescribed" means prescribed by rules of Court.

[a] For an instance of an affiliation order see the Affiliation Proceedings Act, 1957 (5 & 6 Eliz. II, C. 55), sections 4 and 5. See also the National Assistance Act, 1948 (11 & 12 Geo. VI, C. 29), ss. 42 and 44.

## 11. Application to Ireland.

In the application of this Act to Ireland the following modifications shall be made :

(a) The Lord Chancellor of Ireland may make rules regulating the procedure of Courts of summary jurisdiction under this Act, and other matters incidental thereto :

(b) Orders intended to be registered or confirmed in Ireland shall be transmitted by the Secretary of State to the prescribed officer of a Court in Ireland through the Lord Chancellor of Ireland :

(c) The expression "maintenance order" includes an order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the provisions of the Poor Relief (Ireland) Act, 1839 to 1914.

## 12. Extent of Act.

(1) Where His Majesty is satisfied that reciprocal provisions have been made by the Legislature of any part of His Majesty's dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by Courts within England and Ireland, His Majesty may by Order in Council extend this Act to that part, and thereupon that part shall become a part of His Majesty's dominions to which this Act extends.

(2) His Majesty may by Order in Council extend this Act to any British protectorate, and where so extended this Act shall apply as if any such protectorate was a part of His Majesty's dominions to which this Act extends.

## 13. Short title.

This Act may be cited as THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT, 1920.

## [THE INDIAN] MAJORITY ACT, 1875

(Act IX of 1875)

[The Act printed here is as on 15-8-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"The mass of persons domiciled in this country may roughly be divided into (1) Hindus, (2) Muhammadans, (3) European British subjects, (4) persons to whom the Indian Succession Act applies.

In the present state of law, the ages at which persons belonging to these classes respectively attain their majority may be stated as follows :

1. By the Hindu *sastras*, except those prevailing in Bengal, the end of the sixteenth year is the limit of minority; in Bengal the end of the fifteenth year is deemed to be the limit of minority, according to the Hindu law as understood there.

By Bengal Regulation XXVI of 1793 and Madras Regulation V of 1804, the minority of Hindu proprietors of estates paying revenue to Government was extended, in the case of such persons in each presidency respectively, to the end of the eighteenth year.

By Acts XL of 1858 and XX of 1864, for the care of the persons and property of minors in the Presidency of Fort William in Bengal and in the Presidency of Bombay, respectively, it was enacted that, for the purposes of those Acts, every person should be deemed to be a minor who had not attained the age of eighteen years. European British subjects are excluded from the purview of the Acts. The effect of those Acts clearly was, for the purposes of those Acts, to alter the Hindu law as to the age of majority in the cases of persons to whom the Acts applied, and in course of time the question was raised in the Calcutta High Court as to whether the Acts did not similarly affect the age of majority of Hindus subject to the ordinary original jurisdiction of that Court, and was decided in the affirmative. This opinion was not, however, accepted by other Judges of the same Court before whom the question arose, and the matter having been by one of them expressed to be in a complicated and unsatisfactory state was the other day referred to a Full Bench of the Court, which decided that a Hindu resident in Calcutta, who had no property in the mofussil, attained his age of majority on the completion of his fifteenth year, and refrained from deciding what was the effect of the Acts upon persons resident in Calcutta and possessed of property in the mofussil.

In Bombay it has been decided that, notwithstanding Act XX of 1864, a Hindu resident in the mofussil came of age on attaining sixteen years, so as to be able to prosecute a claim by suit.

In a case which came before the late Sadr Diwani Adalat of Bengal, it was held that, according to the Jain law, majority begins on the completion of sixteen years.

2. By Muhammadan law, the end of the fifteenth year, or the attainment of puberty, is the age of majority; but Muhammadans are, equally with Hindus and other British subjects in this country not being Europeans affected by the Regulations and Acts already noticed.

3. European British subjects not domiciled in this country come of age at twenty-one,

and it has been held that they and their legitimate descendants, even though domiciled in this country, do the same, so far as regards their capacity to contract. This opinion has been questioned in a recent case.

4. The class of persons to whom the Indian Succession Act applies includes Europeans by birth or descent domiciled in British India East Indians or Eurasians, Jews, Armenians, Parsis and Native Christians. The Indian Succession Act defines a minor to be a person who has not completed the age of eighteen years, and defines 'minority' to be the status of such a person. In the case of *Hollo v. Smith* [(1867) 1 Beng. L. R. (O. C.) 10], already referred to, Mr. Justice Markby said that it would be carrying implication much too far to suppose that this definition was intended by the legislature as an alteration of the age of majority for all purposes; and held that a person of one of the classes to whom the Act applies did not attain his majority, so as to have the full capacity to contract, until he attained the age of twenty-one. In the later case of *Archer v. Warkun* [(1872) 8 Beng. L. R. 372], Mr. Justice Phear treated the question as still an open one, and held that, by the provisions of Act XL of 1858, a person of one of the classes to whom the Indian Succession Act applies attained the age of majority, for all purposes of contract, at eighteen years. The ground of this decision so far as regards the effect of Act XL of 1858, was overruled in the subsequent decision of the Full Bench in *Mulluck v. Mullik*; and the law respecting the age of majority of persons in this class, is, perhaps, in a more unsatisfactory state than even that relating to persons in the other classes.

Such being, briefly, the present state of the law, it is obvious that, in the highly important matter of the age at which persons can enter into binding contracts with others and undertake responsibilities as majors, the law of this country is most confused and uncertain. To remedy this the present Bill has been drawn. The alteration proposed by it in the Hindu and Muhammadan laws, in cases now governed on this point by those laws, is not one which affects any principle of those laws touching the religion or conscience of those persons who are subject to them. The change has, already, in part, been made by the Regulations and Acts above-mentioned; and no objection has ever been made to the change thus effected.

To avoid, however, the possibility of any mistake on this point, it is expressly provided in the Bill that it is not to affect the capacity of any person to act in matters connected with marriage, dower, divorce and adoption. By their own laws Muhammadans and Hindus are empowered to act in these matters at an earlier age than that here fixed as the age of majority, and it is not intended to interfere with their capacity in these respects.

The Bill also provides that it shall not affect the religion or religious rites and usages of any class of Her Majesty's subjects or the capacity of any person who, before the com-

commencement of the proposed Act, shall have attained majority under the law applicable to him.

It has been thought advisable to extend the Act to all persons, including European British subjects domiciled in British India. Were European British subjects excluded in all cases, it would be necessary for all persons dealing with them to ascertain whether they

came within the legal definition of the term, an enquiry often difficult, and which would be most embarrassing were the exception extended, as in *Bello v. Smith* [(1887) 1 Beng. L. R. (O. C.) 10], to all legitimate descendants, however remote, domiciled in British India, of European British subjects. The fourth section states the law as it now stands."

—Gazette of India, 1874, Part V, page 153.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts VIII of 1890; III of 1951.

—Adapted by A. O., 1937; A. L. O., 1950.

—Extended by LIX of 1949; XXX of 1950.

—Extended in Bombay by Bom. Act IV of 1950.

#### [THE INDIAN] MAJORITY ACT, 1875

(ACT IX OF 1875)\*

[2nd March, 1875.]

*An Act to amend the law respecting the age of majority.*

#### Preamble.

WHEREAS, in the case of persons domiciled in <sup>b</sup>[India] it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons *see* Gaz. of Ind., 1874, Pt. V, p. 153.

This Act has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), S. 3 (a), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kollan in the District of Singbhum. [The Lohardaga District included at this time the present District of Palamau, which was separated in 1894. Lohardaga is now called the Ranchi District; Cal. Gaz. 1899, Pt. I, p. 44]. *See* Gaz. of Ind., 1881, Pt. I, p. 504. The North Western Provinces;

Tarai . . . *See* Gaz. of Ind., 1876, Pt. I, p. 505.

The Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950], and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States Merged in the State of Bombay by Bom. Act IV of 1950, S. 3 [30-3-1950].

[b] *Substituted* for "Part A States and Part C States", by Part B States (Laws) Act, 1951 (III of 1951), S. 2 and Sch., [1-4-1951].

#### 1. Short title.

This Act may be called THE INDIAN MAJORITY ACT, 1875.

#### Local extent.

\*[It extends to the whole of India <sup>b</sup>[except the State of Jammu and Kashmir]];

#### Commencement and operation.

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

[a] *Substituted* for the original para, by A. L. O., 1950. [b] *Substituted* for "except Part B States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch., [1-4-1951].

#### Preamble — Note 1

[1] The Indian Majority Act was intended to prolong the period of nonage in the case of Hindu as well as other subjects of the Crown and to attain uniformity and certainty respecting the age of majority. (11) 33 All 525 (527, 528) (DB).

[2] In passing the Majority Act it could not have been the intention of the Legislature merely to provide definitions of 'majority' and 'minority.' Had that been the case, S. 2 of the said Act would not have provided that nothing contained in the said enactment shall

affect the capacity of any person to act in the matters referred to; that such a provision was considered necessary clearly indicates that the enactment was intended to affect the capacity to act in regard to all other matters notwithstanding that the Act contains no affirmative provision to the effect that in all matters not saved by S. 2 a person shall be deemed to have the capacity to act only when he attains majority under S. 3. 1915 Mad 815 (820) [AIR V 2] : 38 Mad 160 (DB).

## 2. Savings.

Nothing herein contained shall affect—

- (a) the capacity of any person to act in the following matters (namely),— marriage, dower, divorce and adoption;
- (b) the religion or religious rites and usages of any class of <sup>a</sup>[citizens of India]; or
- (c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

[a] Substituted for "His Majesty's subjects in India", by A. L. O., 1950.

### SECTION 2 — SYNOPSIS

#### 1. Scope.

#### 2. Marriage — Clause (a).

#### 3. Divorce — Clause (a).

#### 4. Dower — Clause (a).

#### 5. Adoption — Clause (a).

#### 6. Religion or religious rites and usages— Clause (b).

#### 7. Person attaining majority under prior law — Clause (c).

1. Scope. — [1] The capacity to make a will by a Hindu is not safeguarded by cl. (a) of S. 2 since its application is confined to the cases of marriage, dower, divorce and adoption. (11) 33 All 525 (527) (DB) \* (12) 36 Bom 622 (624) (DB). (The Indian Majority Act has modified Hindu law on the question of minority of the Hindus in the matter of making wills.) \* 1915 Mad 815 (816) [AIR V 2] : 38 Mad 166 (DB).

[See also 1924 Cal 644 (645) [AIR V 11]. (Married woman governed by the Indian Succession Act — Guardian appointed for person and property — Death before 21 : Held that the deceased was a minor and will executed by her disposing of her property before her death is invalid.)]

[2] In passing the Indian Majority Act it could not have been the intention of the Legislature to provide definitions of majority and minority. Had that been the case, S. 2 of the said Act would not have provided that nothing contained in the said enactment shall affect the capacity of any person to act in the matters referred to; that such a provision was considered necessary clearly indicates that the enactment was intended to affect the capacity to act in regard to all other matters notwithstanding that the Act contains no affirmative provisions to the effect that in all matters not saved by S. 2 a person shall be deemed to have the capacity to act only when he attains majority under S. 3. 1915 Mad 815 (820) [AIR V 2] : 38 Mad 166 (DB).

[See also 1948 Cal 66 (68) [AIR V 35 C 30] : ILR (1946) 2 Cal 349. (The Majority Act does not use the expression "capacity to contract" but "capacity to act" which is of much wider import.)]

[3] Section 2 does not merely create an exception to the rule contained in S. 11 of the Contract Act against the capacity of minors to contract. By using the words "capacity to act" it has created an exception in their favour even in the matter of instituting suits relating to marriage, dower, and divorce free from the restrictions imposed on minors gene-

rally under O. 32, R. 1, Civil P. C., regarding the institution of suits. 1948 Cal 66 (68) [AIR V 35 C 30] : 1 L R (1946) 2 Cal 349 \* 1955 Tripura 2 (5) [AIR V 42 C 2] \* 1952 Cal 361 (382) [AIR V 39].

[But see 1952 Mad 754 (755) [AIR V 39] : ILR (1953) Mad 118 (DB) \* (81) 3 Mad 248 (248) (DB) \* 1942 Oudh 243 (244) [AIR V 29] : 17 Luck 572 (DB). (Section 2 (a), Majority Act, merely relieves a Mahomedan girl of some of the consequences of her minority, but she remains a minor nonetheless. That being so the provisions of O. 32, R. 1, Civil P. C., still apply. Hence a Mahomedan girl of 15 can file a suit for dower only through her next friend.)]

[4] Under the Indian Majority Act a person who has not attained the age of majority (i. e., 18 years) is incompetent to contract and is therefore a child within the meaning of S. 488, Criminal P. C. 1935 Cal 488 (489) [AIR V 22] : 62 Cal 369 : 36 Cri L Jour 1114.

[5] Although the Rules framed under the Bengal Agricultural Debtors Act clearly envisage the necessity for the representation of a minor who has been made a party to the proceedings under that Act neither those Rules nor that Act have defined a minor. Hence a minor for the purpose of that Act also must be understood to mean a person who has not attained majority according to the provisions of this Act. 1957 Cal 211 (216) [AIR V 44 C 65].

2. Marriage — Cl. (a). — [1] As regards questions of marriage, adoption etc., the capacity of minors is left untouched under this Act. Hence the raising of the age of majority by S. 3 from 18 to 21 in the case of minors under the Court of Wards Act has no effect on those matters. 1922 Mad 1 (2) [AIR V 9] (DB) \* 1933 All 480 (481) [AIR V 20] (DB) \* 1923 Lah 102 (103) [AIR V 10]. (A boy under 15 under Muhomedan law is therefore competent to give his sister in marriage as her guardian.)

[2] 'Capacity to act in matter of marriage' in S. 2 (a), does not refer, and is not applicable, to pre-nuptial agreement to contract marriage in future. 1936 Rang 212 (213) [AIR V 23] : 14 Rang 215 (FB). (AIR 1922 Low Bur 6 (FB), AIR 1919 Upp Bur 39 and AIR 1919 Low Bur 123, Overruled.) \* 1937 Bom 392 (394) [AIR V 24]. (Betrothal is not an essential part of marriage but is the first step and independent of marriage.) \* 1942 Oudh 243 (244) [AIR V 29] : 17 Luck 572 (DB).

[3] A Muslim girl who has attained her puberty is competent to sue for dissolution of her marriage without a next friend although she is below the age of majority prescribed under S. 3 of the Majority Act. To institute a

### 3. Age of majority of persons domiciled in India.

Subject as aforesaid, "[every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure," has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age] shall, notwithstanding anything contained in the Indian Succession Act<sup>e</sup> or in any

#### Section 2 — Note 2 (contd.)

suit for dissolution of marriage is clearly "to act in the matter of marriage" within the meaning of S. 2 of the Act. 1948 Cal 66 (68) [AIR V 35 C 30] : ILR (1946) 2 Cal 349.

[4] A Parsi suing to have a marriage declared void "is acting in the matter of marriage" and the Majority Act fixing 18 as the age of majority does not apply. The age of majority in such a case is that prescribed by the Parsi Marriage and Divorce Act (15 [XV] of 1865) viz., 21 years. (98) 22 Bom 431 (437) (DB).

3. Divorce — Cl. (a). — [1] "Capacity to act" includes "capacity to contract." Minor can delegate to his wife the power to divorce. 1928 Cal 303 (304) [AIR V 15] (DB).

[2] Right of Mahomedan wife of sixteen and over to sue for divorce under Mahomedan Law is saved by the section. 1931 Bom 76 (77) [AIR V 18] : 55 Bom 160 (DB).

[3] A Muslim girl who has attained her puberty is competent to file a suit for the dissolution of her marriage without a next friend. Such a suit is not incompetent on the ground of its non-compliance with the provisions of O. 32, R. 1 of the Civil P. C. 1948 Cal 66 (68) [AIR V 35 C 30] : ILR (1946) 2 Cal 349. (The words "to act" in cl. (a) are wide enough to include the institution of a suit.) \* 1955 Tripura 2 (5) [AIR V 42 C 2] + 1952 Cal 381 (382) [AIR V 39].

[But see 1952 Mad 754 (755) [AIR V 39] : ILR (1953) Mad 118 (DB).]

[4] Under this section age of majority is twenty-one for Indian Christians in suits for divorce. 1925 Sind 95 (95) [AIR V 12].

4. Dower—Cl. (a).—[1] A person cannot be said to be acting in the matter of dower unless it is shown that the gift was on the occasion or by reason or in consideration of marriage. (13) 24 Mad L Jour 49 (53) (DB).

[2] "Capacity to act in matters of dower" does not include bringing a suit for dower. Hence a Muhammadan major according to his personal law but minor according to the Act, can sue through next friend. 1942 Oudh 243 (244) [AIR V 29] : 17 Luck 572 (DB).

[3] Majors under personal law, though not under the Act, can fix amount and nature of dower. 1925 Cal 322 (323) [AIR V 12] (DB).

[4] Execution of *ekrarnama* by Muhammadan woman, major according to Muhammadan law but minor according to Majority Act, relinquishing part of dower and changing its character: *Heid* that *ekrarnama* was not valid and binding on her as case did not fall within exception to S. 2. 1939 Pat 133 (135) [AIR V 26] : 17 Pat 303 (DB) + 1918 Mad 319 (320) [AIR V 5] : 41 Mad 1026 (DB) + 1932 All 649 (650) [AIR V 19] : 54 All 806 (DB).

[5] If a Mahomedan minor who is a major by his personal law but a minor under the Indian Majority Act enters into a marriage he must enter into a contract for payment of dower. Even if he does not do so, the law will presume such a contract. 1925 Cal 322 (323, 324) [AIR V 12] (DB).

5. Adoption — Cl. (a). — [1] A Hindu widow of the age of 15 might validly adopt if she had attained sufficient maturity of understanding to comprehend the nature of the act. 1919 Bom 107 (110) [AIR V 6] : 43 Bom 481 (DB).

[2] Hindu minor under the Court of Wards, if over 18 and below 21, can validly adopt without its consent. Questions of marriage, adoption, etc., are left untouched by Indian Majority Act, S. 2. 1922 Mad 1 (2) [AIR V 9] (DB).

[3] Section 2 does not make persons who have attained the age of majority according to the Hindu Law, majors under this Act. It only enables them to act in matters of adoption, amongst other such matters, notwithstanding their not answering the description of a major under the Act but it does not authorise them to perform all or any of the acts bearing on adoptions which can be done only by majors under this Act. Thus they may validly make an adoption or confer authority on their wives to do so but they cannot give a valid consent as *sapindas* to an adoption proposed to be made by a widow. 1960 Andh Pra 578 (584) [AIR V 47 C 187].

6. Religion or religious rites and usages — Cl. (b). — [1] Age of majority fixed by the Act does not apply to offices which involve performance of religious duties. 1916 Mad 116 (122) [AIR V 3] (DB).

7. Person attaining majority under prior law—Cl. (c).—[1] A Muhammadan who had attained the full age of 16 years before the Indian Majority Act came into force and had reached the age of majority under the Mahomedan law was competent in respect of age to make a contract. Hence a Muhammadan who executed a bond on 5-8-1875 and was sixteen years and nine months old, was liable under the bond and the Indian Majority Act had no application to the case. (85) 7 All 763 (764) (DB).

### SECTION 3 — SYNOPSIS

1. Scope.
2. "Appointed or declared."
3. Court of Justice.
4. Assumption of management by Court of Wards.
5. Domicile in India.



other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in <sup>a</sup>[India] shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

[a] *Substituted* for "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards", by Guardians and Wards Act, 1890 (VIII of 1890), S. 52. [b] *See now the Code of Civil Procedure, 1908* (V of 1908), Sch. I, Order XXXII. [c] *See now the Succession Act, 1925* (XXXIX of 1925). [d] *Substituted* for "Part A States and Part C States", by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch., [1-4-1951].

### Section 3 (contd.)

1. Scope. — [1] The intention of the Legislature to be gathered from S. 3 of the Majority Act would appear to be to extend the minority to 21 years where the minor's person or property was in the hands of the guardian at the age of 18. ('89) 13 Bom 285 (289) (DB) \* ('13) 35 All 150 (152) (DB) \* ('07) 29 All 672 (673) (FB). (1891 All W N 118 decided before the amendment no longer good law.) \* ('03) 25 All 407 (416) : 30 Ind App 165 (PC).

[2] When the defence of minority is raised, the onus is on the party setting up the will to show that the person who made the will was of full age when he made it. 1915 Mad 815 (816) [AIR V 2] : 38 Mad 166 (DB).

[3] For an offence under the Penal Code (S. 363, kidnapping from lawful guardianship) the minority of the person kidnapped is to be determined not by reference to the personal law, but by S. 3 of this Act. 1915 Mad 636 (636) [AIR V 2] : 37 Mad 567 : 16 Cri L Jour 169.

[4] Section 3 of the Indian Majority Act extending minority to 21 years in certain events does not in any way affect the construction of S. 101 of the Indian Succession Act which invalidates any disposition by which the vesting may be delayed beyond the lifetime of a person living at the testator's death. 1921 Mad 258 (261) [AIR V 8] : 44 Mad 446 (DB).

[5] Though under the Hindu law the father is not entitled to the custody of his son after the boy has attained 16 years of age, the passing of the Indian Majority Act of 1875 (S. 3) by continuing the minority of the boy till he attains the age of 18 extended the right of the father to the custody of the boy's person till such age of 18. Like the Hindu boy, a Muslim boy also is bound to remain in his guardian's custody till 18 notwithstanding his emancipation at 15 under his personal law. 1917 Mad 612 (615) [AIR V 4] : 39 Mad 608 (DB).

[6] The non-attainment of majority according to this section does not affect the right of a Muslim girl who is a major under her personal law to sue without a next friend for the dissolution of her marriage. That right is saved to her by S. 2 of this Act. 1952 Cal 381 (382) [AIR V 39] \* 1948 Cal 66 (68) [AIR V 35 C 30] : ILR (1946) 2 Cal 349.

[7] Section 3 is not violative of Art. 14 of the Constitution. The discrimination it has made between one class of minor and another for the purpose of prescribing different ages of majority is not *prima facie* unreasonable. 1951 Pat 570 (575) [AIR V 38 C 161] : 30 Pat

735 (DB). (Hence the onus will lie on the party who challenges the validity of the section to show that the classification is arbitrary and unreasonable.)

2. "Appointed or declared." — [1] The word "appointed" in S. 3 means finally and validly appointed. If an order of appointment is set aside either in review or in appeal, it is not an order which could have the effect of prolonging the period of minority under S. 3. Similarly, a portion of a conditional order cannot operate to prolong the period if the condition is not fulfilled with the result that the order does not come into operation at all. 1945 Bom 243 (248) [AIR V 32] : 11 L R (1945) Bom 449 (DB) \* 1933 Lah 600 (601) [AIR V 20] \* ('12) 15 Oudh Cas 153 (156).

[2] Where a person is appointed as guardian on condition of his furnishing security and fails to furnish the security required, minor becomes major when he completes his 18th year. Such a conditional order of appointment is invalid under the Act. 1927 Mad 36 (36) [AIR V 14] : 49 Mad 809 (FB).

[3] Grant of letters of administration under S. 33 of Act 5 [V] of 1881 does not amount to appointment of guardian of property of minor. ('13) 24 Mad L Jour 450 (453) (DB).

[4] The order appointing a guardian takes effect neither from the date on which application is made nor from the date of passing the order but from the date on which a certificate of guardianship is actually issued. Hence where a minor attained 18 years between the date of application and the issue of a certificate and signed promissory note, he is liable under the note and cannot invoke S. 3. ('83) 9 Cal 901 (904) (DB).

[5] Minor need not have separate property before guardian can be appointed. ('03) 25 All 407 (416) : 30 Ind App 165 (PC) \* 1929 Bom 475 (477) [AIR V 16] : 54 Bom 75.

[6] Where guardian has been appointed or declared under the Guardians and Wards Act, the minority of the ward does not cease till he attains the age of 21 years and it is immaterial whether the guardian dies, or is removed, or otherwise ceases to act before the ward attains 21. ('10) 6 Ind Cas 6 (6) (DB) (Cal) \* ('07) 29 All 672 (674) (FB). (Discharge of guardian.) \* 1958 Andh Pra 766 (768) [AIR V 45 C 223] : 1 L R (1957) Andh Pra 544. (Discharge of guardian.) \* 1948 All 296 (296) [AIR V 35 C 117] : 1 L R (1948) All 283. (Death of guardian.) \* ('09) 36 Cal 768 (774) (DB). (Death of guardian.) \* 1931 Lah 394 (395) [AIR V 18] (DB). (Necessity for guardian ceasing.) \* 1924 Lah 157 (158) [AIR



#### 4. Age of majority how computed.

In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

##### Illustrations

(a) Z is born in <sup>a</sup>[India] on the first day of January 1850, and has <sup>b</sup>[an Indian domicile]. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(b) Z is born in <sup>a</sup>[India] on the twenty-ninth day of February 1852, and has <sup>b</sup>[an Indian domicile]. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

#### Section 3 — Note 2 (contd.)

V 11] + 1920 Mad 661 (662) [AIR V 7] (DB) + 1920 Nag 245 (246) [AIR V 7]. (Release of minor from guardianship does not make him major so as to affect limitation.) + 1921 Pat 166 (168) [AIR V 8] : 6 Pat L Jour 273 (DB). (Cancellation of guardianship certificate.) + 1921 Pat 69 (71) [AIR V 8] : 5 Pat L Jour 460 (DB). (Discharge of guardian before minor is 18.)

[7] Order appointing guardian is no evidence of minor's age. 1921 Pat 69 (72) [AIR V 8] : 5 Pat L Jour 460 (DB).

[8] R died leaving certain properties in Lyalpur district. The elder of the two sons P executed several mortgages on the properties in favour of strangers. The younger son H died leaving a minor son S. S sued for a declaration that the sale by P was void for want of consideration and legal necessity : *Held* that since H was only 18 or 19 at the time of his death and a guardian was appointed by the Court, he continued to be a minor and any assent by him to the sale was valueless and in any case would not be binding on his son. 1931 Lah 394 (395) [AIR V 18] (DB).

[9] If the appointment of a guardian is not lawful being opposed to the provisions of the Act, the age of minority is not extended to 21 years. ('35) 52 Sind L R 215 (219) (DB).

[10] The disability of minority only continues so long as the Court of Wards retains charge of a minor's property and no longer. ('90) 17 Cal 944 (949) (DB).

[11] Where minor was adopted after 18 but before 21 years of his age and a guardian had been appointed before his 18th age : *Held* his minority continued till 21 and that he cannot be minor with respect to the property of his natural father and major with respect to the property inherited by him from his adoptive father. 1924 All 892 (894) [AIR V 11] : 46 All 744 (DB).

**3. Court of Justice.** — [1] Words "Court of Justice" in the Act mean Court of Justice which has jurisdiction to do an act. 1914 Nag 82 (84) [AIR V 1] : 10 Nag L R 161.

[2] The Collector is not a Court of Justice within the meaning of S. 3. ('90) 17 Cal 944 (949) (DB).

[3] The Act draws a distinction between guardians appointed by a Court of Justice and other guardians. A guardian appointed by a

will and to whom probate has been granted is not a guardian appointed by a Court of Justice. The probate establishes only the authority of his appointment. ('78) 2 Cal L R 577 (578, 579) (DB).

**4. Assumption of management by Court of Wards.** — [1] The expression "minor under the jurisdiction of the Court of Wards" means a person of whose estate the Court of Wards has actually assumed management under the orders of the Government and not a person of whose estate the Court of Wards might, with the sanction of the Government take charge. ('81) 3 Mad 11 (13) (DB).

**5. Domicile in India.** — [1] It was held that the words "every other person domiciled in British India" read with the preamble exclude European British subjects not domiciled in British India and having only a temporary residence. ('85) 7 All 490 (498) (FB).

[2] A person may have dealings in India or may even reside there but still if he is not domiciled in India S. 3 will not apply to him. In the case of such a person the age of majority must be determined in accordance with the law of his own domicile. 1946 Bom 452 (453) [AIR V 33 C 92] : ILR (1946) Bom 469.

[See however ('94) 21 Cal 911 (913). (*Held* an alien although he was a major according to the law of his own country could not be granted letters of administration under the Probate and Administration Act of 1881 if he was not a major according to the Indian Majority Act.)]

[3] Where an Indian State had adopted the provisions of this Act as its law it was held that a subject of that State whose estate had been taken over by the Court of Wards attained his majority only when he reached the age of 21. 1946 Bom 452 (454) [AIR V 33 C 92] : ILR (1946) Bom 469.

#### Section 4 — Note 1

[1] The age of a person referred to in S. 3 is to be counted from the date of his birth and cannot be counted from the date of his conception. 1948 Bom 150 (152) [AIR V 35 C 40] : ILR (1947) Bom 750 (DB) + 1954 Fepsu 53 (55) [AIR V 41 C 28].

(c) Z is born on the first day of January 1850. He acquires a domicile in \*[India]. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

[a] *Substituted* for "a Part A State or a Part C State" by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch., [1-4-1951]. [b] *Substituted* for "a domicile in a Part A State or a Part C State", *ibid.*

## [THE] MALABAR WAR-KNIVES ACT, 1854 (ACT XXIV of 1854)

[The Act printed here is as on 15-8-1960.]

### SECTIONS

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| 1. Use of war-knives prohibited.                      | 3. Power to search for war-knives. |
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### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act XI of 1901.

—Adapted in Kerala by Ker A.L.O., 1956.

—Adapted by A.L.O., 1950.

—Repealed in part by Act XIV of 1870.

## [THE] MALABAR WAR-KNIVES ACT, 1854<sup>a</sup> (ACT XXIV OF 1854)

[28th October, 1854.]

*An Act to prohibit the possession of certain offensive weapons in Malabar.*

### Preamble.

WHEREAS it is expedient to prohibit the possession of certain offensive weapons in the District of Malabar, in the Presidency of Fort St. George; It is enacted as follows:—

[a] Short title was given by the Amending Act, 1901 (XI of 1901).

### STATE AMENDMENT

#### KERALA

In Preamble, *omit* the words "in the Presidency of Fort St. George".

—Kerala A. L. O., 1956.

### 1. Use of war-knives prohibited.

The use of the ayudha katti or war-knife, or of any similar offensive weapon, is hereby prohibited throughout the District of Malabar <sup>a</sup>[\* \* \*].

[a] Certain words providing for the surrender of weapons by a certain date were *omitted* by Repealing Act, 1870 (XIV of 1870).

### STATE AMENDMENT

#### KERALA

For "the District of Malabar", *substitute* "the District of Malabar excluding the Kasaragod Taluk".

—Kerala A.L.O., 1956.

*Note.*—Possession, manufacture, sale and purchase of the prohibited weapon is made punishable under the next section.

### 2. Fine for possessing, purchasing, etc., war-knives.

\*[\* \* \*] Any person who shall be found in possession of any ayudha katti or war-knife or of a similar offensive weapon, or who shall purchase, or sell, or manufacture, or cause to be manufactured, any ayudha katti or war-knife or similar weapon, shall be liable, on conviction before a Magistrate, to a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both; and the said war-knife or weapon shall be confiscated.

[a] The words "After such date" were *omitted* by Repealing Act, 1870 (XIV of 1870).

### 3. Power to search for war-knives.

It shall be lawful for the Magistrate of Malabar to cause search to be made by his Police-officers, acting under his warrant, in any house or other place in

which any *ayudha katti* or war-knife, or any similar offensive weapon, may be supposed to be, contrary to this Act; and any such *ayudha katti* or war-knife which shall be found may be seized and confiscated.

It shall also be competent to the Magistrate, at his discretion, to delegate to any of his \*[\* \*] Assistants the powers conferred by this section.

#### Penalty for resisting search.

Any person who shall resist or oppose such search or seizure, or forcibly withstand any Police-officer charged with such warrant, shall be liable to the same penalties as if such person had opposed or resisted the execution of a warrant for the search after stolen goods.

[a] The word "European" was omitted by the A.L.O., 1950.

### [THE] MALICIOUS DAMAGE ACT, 1861

(24 and 25 Vict. c. 97)<sup>a</sup>

[6th August 1861]

*An Act to consolidate and amend the Statute Law of England and Ireland relating to Malicious Injuries to Property.*

[a] Sections 42, 43 and 56 are the only existing provisions applicable to India, and they alone are reproduced in this volume.

This Act has been repealed in part by 55 & 56 Vict., c. 19, 56 & 57 Vict., c. 54 and 11 & 12 Geo. VI, c. 58.

NOTE.—The Law Commission of India in its Fifth Report (British Statutes applicable to India), 1957, page 46, observes: "This statute, in so far as it applies to India, penalises the act of maliciously setting fire to, or casting away or otherwise destroying a ship or vessel.

"Such a provision is necessary for India and, in fact, [this Act] forms the subject-matter of illustrations (e) and (f) of section 425 of the I. P. C. There is no reason why a section should not be inserted in the I. P. C. embodying [this Act], so that the English statute may be dispensed with".

#### 42. Setting fire to or casting away or destroying a ship.

Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life \*[\* \* \*] or to be imprisoned \*[\* \* \*] b[\* \* \*].

[a] Certain words were repealed by (1892) 55 & 56 Vict., c. 19 and (1893) 56 & 57 Vict., c. 54. [b] The words "and, if a male under the age of sixteen years with or without whipping" were repealed by (1948) 11 & 12 Geo. VI, c. 58, S. 83 & Sch. X, Part I (this repeal extends to England only).

#### 43. Setting fire to or casting away etc. a ship, to prejudice the owner or underwriters.

Whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life \*[\* \* \*] or to be imprisoned \*[\* \* \*] b[\* \* \*].

[a] See foot-note 'a' under S. 42. [b] See footnote 'b' under S. 42.

\* \* \* \* \*

**56. Principals in the second degree and accessories.**

In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in same manner as the principal in the first degree is by this Act punishable, and every accessory after the fact to any felony punishable under this Act shall on conviction be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, [\* \* \*]

**Abettors in misdemeanors.**

and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender.

[a] The words "and with or without solitary confinement" were repealed by (1893) 56 & 57 Vict., c. 54.

**[THE] MANOEUVRES, FIELD FIRING AND ARTILLERY  
PRACTICE ACT, 1938**

**(Act V of 1938)**

[The Act printed here is as on 15-8-1960.]

**C O N T E N T S**

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**CHAPTER I.  
MANOEUVRES.**

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**CHAPTER II.**

**FIELD FIRING AND ARTILLERY  
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**STATEMENT OF OBJECTS AND REASONS**

"To maintain the efficiency of the Army it is necessary in India, as in every other country, to hold manoeuvres and to practice firing in open country from time to time. Manoeuvres take place over large areas and should preferably be held in different localities every year. Firing practice is of two kinds, either with artillery or with rifles or machine-guns. The latter may be sub-divided again into firing at targets on a rifle range and field firing, or practice in the open country under conditions similar to those of war. Manoeuvres, artillery practice and field firing, all involve some invasion of private rights and a certain amount of damage to private property, because sufficient waste land for these purposes does not exist within reach of cantonments. It follows also that, in the interests of their safety, it may be necessary to exclude the owners of the land from it for short periods during such operations.

At present with the co-operation of the civil authorities, the local military authorities come to an agreement with the owners of the land, and pay them compensation for any damage or inconvenience caused. In England, and in most other countries, the military authorities have statutory powers to enable them to carry out the essential operations referred to above; and a regular procedure is prescribed by law for the assessment and payment of compensation for damage and inconvenience.

The Indian practice is not altogether satisfactory from the point of view either of the public or of the Army, and it is felt that the time has come to regularize it by putting it on a legal basis. The object of the Bill is to secure this legal authority; and its provisions follow closely those of the Military Manoeuvres Act and the Military Lands Act in England." — Gaz. of Ind., 1936, Part V, page 326.

**ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION**

—Amended by Act III of 1951.

—Extended by Acts LIX of 1949; XXX of 1950.

**[THE] MANOEUVRES, FIELD FIRING AND ARTILLERY  
PRACTICE ACT, 1938.**

(ACT V OF 1938).<sup>a</sup>

[12th March, 1938.]

*An Act to provide facilities for military manoeuvres and for field firing and artillery practice.*

WHEREAS it is expedient to provide facilities for military manoeuvres and for field firing and artillery practice; It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1936, Pt. V, p. 326; for Report of the Select Committee, see Gaz., of Ind., 1937, Pt. V, p. 272.

It has been applied to the District of Angul and the Districts of Koraput, the Khondmals and the Ganjam Agency tracts, see Orissa Gaz., 1948, Pt. III, pages 83 and 419 respectively.

This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950, (XXX of 1950), S. 3 [16-4-1950.]

The Act is extended to the State of Jammu and Kashmir subject to the provisions contained in the Part B States (Laws) Act, 1951 (III of 1951)—See J. & K. Gaz., 27-12-1951, Pt. III, page 459.

**1. Short title and extent.**

(1) This Act may be called **THE MANOEUVRES, FIELD FIRING AND ARTILLERY PRACTICE ACT, 1938.**

(2) It extends to the whole of India \*[\* • • • \*].

[a. The words "except Part B States" were omitted by Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].]

**CHAPTER I**

**MANOEUVRES**

**2. Power of State Government to authorise manoeuvres.**

(1) The ^[State Government] may, by notification in the local ^[Official Gazette], authorise the execution of military manoeuvres over any area specified in the notification during a specified period not exceeding three months :

Provided that the same area or any part thereof shall not ordinarily be so specified more than once in any period of three years.

(2) The ^[State Government] shall publish notice of its intention to issue a notification under sub-section (1) as early as possible in advance of the issue of the notification, and no such notification shall be issued until the expiry of three months from the date of the first publication of such notice in the local ^[Official Gazette].

(3) The notice required by sub-section (2) shall be given by publication in the local ^[Official Gazette] and shall also be given throughout the area which it is proposed to specify in the notification by publication in the manner prescribed by rules made under section 13, and shall be repeated by like publication one month and one week as nearly as may be before the commencement of the manoeuvres.

**3. Powers exercisable for purposes of manoeuvres.**

(1) Where a notification under sub-section (1) of section 2 has been issued, such persons as are included in the military forces engaged in the manoeuvres may, within the specified limits and during the specified periods,—

(a) pass over, or encamp, construct military works of a temporary character, or execute military manoeuvres on, the area specified in the notification, and

(b) supply themselves with water from any source of water in such area :

Provided that nothing herein contained shall authorise the taking of water from any source of supply, whether belonging to a private owner or a public authority, of an amount in excess of the reasonable requirements of the military forces or of such amount as to curtail the supply ordinarily required by those entitled to the use of such water supply.

(2) The provisions of sub-section (1) shall not authorise entry on or interference with any well or tank held sacred by any religious community or any place of worship or ground attached thereto except for the legitimate purpose of offering prayers or any place or building reserved or used for the disposal of the dead, or any dwelling house or premises attached thereto or any educational institution, factory, workshop or store or any premises used for the carrying on of any trade, business or manufacture or any garden or pleasure ground, or any ancient monument as defined in section 2 of the Ancient Monuments Preservation Act, 1904.

#### **4. Duty of Officer Commanding to repair damage.**

The Officer in Command of the military forces engaged in the manoeuvres shall cause all lands used under the powers conferred by this Chapter to be restored, as soon and as far as practicable, to their previous condition.

#### **5. Right to compensation for damage caused by manoeuvres.**

Where a notification issued under section 2 authorises the execution of military manoeuvres compensation shall be payable from the Defence Estimates for any damage to person or property or interference with rights or privileges arising from such manoeuvres including expenses reasonably incurred in protecting person, property, rights and privileges.

#### **6. Method of assessing compensation.**

(1) The collector of the district in which any area utilised for the purpose of manoeuvres is situated shall depute one or more Revenue Officers to accompany the forces engaged in the manoeuvres for the purpose of determining the amount of any compensation payable under section 5.

(2) The Revenue Officer shall consider all claims for compensation under section 5 and determine, on local investigation and where possible after hearing the claimant, the amount of compensation, if any, which shall be awarded in each case; and shall disburse on the spot to the claimant the compensation so determined as payable.

(3) Any claimant, dissatisfied with a refusal of the Revenue Officer to award him compensation or with the amount of compensation awarded to him by the Revenue Officer, may, at any time within fifteen days from the communication to him of the decision of the Revenue Officer, give notice to the Revenue Officer of his intention to appeal against the decision.

(4) Where any such notice has been given, the Collector of the district shall constitute a commission consisting of himself as chairman, a person nominated by the Officer Commanding the forces engaged in the manoeuvres and two persons nominated by the District Board, and the commission shall decide all appeals of which notice has been given.

(5) The commission may exercise its powers notwithstanding the absence of any member of the commission, and the chairman of the commission shall have a casting vote in the case of an equal division of opinion.

(6) The decision of the commission shall be final and no suit shall lie in any Civil Court in respect of any matter decided by the commission.

(7) No fee shall be charged in connection with any claim, notice, appeal, application or document filed before the Revenue Officer, Collector or the commission under this section.

### OBJECTS AND REASONS

"We have re-drafted the provisions dealing with assessment of compensation. We have provided that a Revenue Officer shall in all cases accompany the forces in order to determine on the spot and where possible in the presence of the claimant the amount of compensation payable and to pay it forthwith.

We have also provided for appeals from awards so made to a commission of which the Collector of the District shall be chairman, and which shall contain in the persons of two members of the District Board representatives of the local inhabitants who may be expected to be familiar with local conditions."

—S. C. R.

### 7. Offences.

If, within the area and during the period specified in a notification under sub-section (1) of section 2, any person—

- (a) wilfully obstructs or interferes with the execution of the manoeuvres, or
- (b) without due authority enters or remains in any camp, or
- (c) without due authority interferes with any flag or mark or any apparatus used for the purposes of the manoeuvres,

he shall be punishable with fine which may extend to ten rupees.

NOTE.—Punishment for obstructing or interfering with the carrying out of field firing or artillery practice is prescribed by S. 12.

## CHAPTER II

### FIELD FIRING AND ARTILLERY PRACTICE

### 8. Definitions.

In this Chapter—

- (a) "field firing" includes air armament practice;
- (b) "notified area" means an area defined in a notification issued under sub-section (1) of section 9.

### 9. Power of State Government to authorise field firing and artillery practice.

(1) The <sup>^</sup>[State Government] may, by notification in the local <sup>^</sup>[Official Gazette], define any area as an area within which for a specified term of years the carrying out periodically of field firing and artillery practice may be authorised.

(2) The <sup>^</sup>[State Government] may, by notification in the local <sup>^</sup>[Official Gazette], authorise the carrying out of field firing and artillery practice throughout a notified area or any specified part thereof during any period or periods specified in the notification.

(3) Before any notification under sub-section (2) is issued, the <sup>^</sup>[State Government] shall publish notice of its intention to issue such notification as early as possible in advance of the issue of the notification, and no such notification shall be issued until the expiry of two months from the date of the first publication of the notice in the local <sup>^</sup>[Official Gazette].

(4) The notice required by sub-section (3) shall be given by publication in the local <sup>^</sup>[Official Gazette] and shall also be given throughout the notified area by publication in some newspaper circulating in and in the language commonly understood in that area and by beat of drum and by affixation in all prominent places of copies of the said notice in the language of the locality and in such other manner as may be prescribed by rules made under section 13 and shall be repeated by like publication one week as nearly as may be before the commencement of the period or of each period specified in the notification :

Provided that the fact of the said beat of drum and affixation shall be verified in writing by one headman and two other literate inhabitants of the

locality and provided further that such notice by the beat of drum shall be given seven and two days as nearly as may be before the commencement of such field firing and artillery practice.

### **10. Powers exercisable for purposes of field firing and artillery practice.**

(1) Where a notification under sub-section (2) of section 9 has been issued, such persons as are included in the forces engaged in field firing or artillery practice may, within the notified area or specified part thereof during the specified period or periods,—

- (a) carry out field firing and artillery practice with lethal missiles, and
- (b) exercise, subject to the provisions of sections 3 and 4, any of the rights conferred by section 3 on forces engaged in military manoeuvres :

Provided that the provisions of sub-section (2) of section 3 shall not debar entry into, or interference with, any place specified in that sub-section, if it is situated in an area declared to be a danger zone under sub-section (2) of this section, to the extent that may be necessary to ensure the exclusion from it of persons and domestic animals :

Provided further that in the case of a dwelling house occupied by women adequate warning shall be given through a local inhabitant and entry shall be effected after such warning in the presence of two respectable inhabitants of the locality.

(2) The Officer Commanding the forces engaged in any such practice may, within the notified area or specified part thereof, declare any area to be a danger zone, and thereupon the Collector shall, on application made to him by the Officer Commanding the forces engaged in the practice, prohibit the entry into and secure the removal from such danger zone of all persons and domestic animals during the times when the discharge of lethal missiles is taking place or there is danger to life or health.

### **11. Compensation.**

The provisions of sections 5 and 6 shall apply in the case of field firing and artillery practice as they apply in the case of military manoeuvres :

Provided that the compensation payable under this section shall include compensation for exclusion or removal from any place declared to be a danger zone of persons or domestic animals, such compensation to be disbursed at not less than the minimum rates prescribed by rules made under section 13 before the exclusion or removal is enforced, and shall also include compensation for any loss of employment or deterioration of crops resulting from any such exclusion or removal.

### **12. Offences.**

If, during any period specified in a notification issued under sub-section (2) of section 9, any person within a notified area—

- (a) wilfully obstructs or interferes with the carrying out of field firing or artillery practice, or
- (b) without due authority enters or remains in any camp, or
- (c) without due authority enters or remains in any area declared to be a danger zone at a time when entry thereto is prohibited, or
- (d) without due authority interferes with any flag or mark or target or any apparatus used for the purposes of the practice,

he shall be punishable with fine which may extend to ten rupees.



## CHAPTER III

### GENERAL

#### 13. Power to make rules.

The <sup>A</sup>[State Government] may, by notification in the local <sup>A</sup>[Official Gazette], make rules —

- (a) prescribing the manner in which the notices required by sub-section (2) of section 2 and sub-section (3) of section 9 shall be published in the areas concerned ;
- (b) regulating the use under this Act of land for manoeuvres or field firing and artillery practice in such manner as to secure the public against danger and to enable the manoeuvre, or practice, to be carried out without interference and with the minimum inconvenience to the inhabitants of the areas affected ;
- (c) regulating the procedure of the Revenue Officers and commissions referred to in section 6 in such manner as to secure due publicity regarding the method of making claims for compensation and preferring appeals from original awards of compensation, the expeditious settlement of claims and of appeals and the payment of compensation so far as possible direct to the claimants ; and
- (d) defining the principles to be followed by the Revenue Officers and commissions referred to in section 6 in assessing the amount of compensation to be awarded.

## [THE] MARKING OF HEAVY PACKAGES ACT, 1951

(ACT XXXIX of 1951)

[The Act printed here is as on 15-8-1960.]

### CONTENTS

#### SECTIONS

1. Short title, extent and commencement.
2. Definitions.

3. Obligation to mark weight on heavy packages.
4. Penalty.
5. Power to make rules.

#### STATEMENT OF OBJECTS AND REASONS

"The Convention concerning the Marking of the Weight on Heavy Packages transported by vessels adopted by the International Labour Conference in 1929 has been ratified by India. The Convention requires that any package or object of one thousand kilogrammes (one metric ton) or more gross weight consigned within the territory of any Member country for transport by sea or inland water-

way should have its gross weight plainly and durably marked upon it on the outside before it is loaded on a ship or vessel. This will prevent heavy unmarked packages from being lifted by mechanical means which are intended for smaller loads. The purpose of the Bill is to give effect to the Convention in India."

—Gaz. Ind., 1950, Pt. II-sec. 2, page 234.

## [THE] MARKING OF HEAVY PACKAGES ACT, 1951

(ACT XXXIX OF 1951)\*

[25th June, 1951.]

*An Act to give effect to the International Convention drawn up in Geneva on the 30th day of May, 1929, for the marking of weight on heavy packages transported by sea or inland water-ways.*

BE it enacted by Parliament as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1950, Pt. II-sec. 2, page 234.

#### 1. Short title, extent and commencement.

- (1) This Act may be called THE MARKING OF HEAVY PACKAGES ACT, 1951.
- (2) It extends to the whole of India.

(3) It shall come into force on such \*date as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 1-11-1951, ~~see~~ S. R. O., 1461 D/- 15-9-1951 published in Gaz. of Ind., 1951, Pt. II-Sec. 3, p. 1608.

## 2. Definitions.

In this Act unless the context otherwise requires,—

- (a) "heavy package" means a package or other object weighing not less than one metric ton, which is equal to one thousand kilogrammes<sup>a</sup> or 2204·6 standard pounds or 26·8 standard maunds;
- (b) "inland water-way" means any canal, river, lake or other navigable water in India.

[a] According to section 3 (1) (g) of the Standards of Weight Act, 1939 (IX of 1939) a standard ton was equal to weight of 2,240 standard pounds. This Act is now repealed by the Standards of Weights and Measures Act, 1956 (LXXXIX of 1956). According to S. 16 (1) read with Sch. I of this Act one standard ton is equal to 1016·05 kilograms.

## 3. Obligation to mark weight on heavy packages.

Every person consigning a heavy package for transport by sea or inland water-way from any place in India shall have marked thereon plainly, durably and conspicuously the gross weight of the packages:

Provided that in cases or circumstances specified by rules made under this Act where it is difficult to determine the correct weight, only the approximate weight may be so marked.

*Note.* — Marking will prevent heavy unmarked packages from being lifted by mechanical means which are intended for smaller loads. This is the purpose and object of the Act.

## 4. Penalty.

(1) If any person contravenes the provisions of section 3, he shall be punishable with fine which may extend to five hundred rupees.

(2) If the person contravening the said provisions is a company or other body corporate, every managing director, manager or secretary thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

## 5. Power to make rules.

The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup>—

- (a) specifying the conditions as to the manner of marking of all heavy packages, the manner of packing and the type of covering to be used;
- (b) specifying the cases or circumstances in which the approximate weight of heavy packages instead of their correct weight may be marked.

[a] For the Marking of Heavy Packages Rules, 1951, ~~see~~ S. R. O. 1670 dated 29-10-1951 published in Gaz. Ind., 1951, Extra., Pt. II-sec. 3, page 1255.

## [THE] MARRIAGES VALIDATION ACT, 1892

(ACT II of 1892)

[The Act printed here is as on 15-8-1960.]

### SECTIONS

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| 1. [ <i>Repealed.</i> ]                          | 5. Application of Act to marriages under Act V of 1865. |
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| 4. Validation of records of irregular marriages. |   |

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by A.L.O., 1950.

—Repealed in part by Act X of 1914.

## [THE] MARRIAGES VALIDATION ACT, 1892

(ACT II OF 1892)<sup>a</sup>

[29th January, 1892.]

*An Act to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872.*

WHEREAS provision is made in Part VI of the Indian Christian Marriage Act, 1872,<sup>b</sup> for the solemnization of marriages between persons of whom both are <sup>c</sup>[Indian Christians], but not of marriages between persons of whom one only is <sup>d</sup>[an Indian Christian];

AND WHEREAS persons licensed under section 9 of the said Act have in diverse parts of <sup>e</sup>[India], through ignorance of the law, permitted marriages to be solemnized in their presence under the said Part between persons of whom one is <sup>d</sup>[an Indian Christian] and the other is not <sup>d</sup>[an Indian Christian];

AND WHEREAS it is expedient that such marriages, having been solemnized in good faith, should be validated;

It is hereby enacted as follows :—

[a] Short title was given by Short Titles Act, 1897 (XIV of 1897).

For Statement of Objects and Reasons, see Gaz. of Ind., 1891, Pt. V, p. 142; for Report of the Select Committee, see *ibid*, 1892, Pt. V, p. 5.

The Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872).

[b] Act XV of 1872. For the provisions of this Act, see Vol. I of this Manual. [c] *Substituted* for "Native Christians," by A.L.O., 1950. [d] *Substituted* for "a Native Christian." *ibid*. [e] *Substituted* for "the Provinces," *ibid*.

**1. Commencement.** [*Repealed by the Repealing and Amending Act, 1914 (X of 1914), S. 3 and Sch. II.*]

## 2. Definition.

In this Act the expression "<sup>c</sup>[Indian Christian]" has the same meaning as in the Indian Christian Marriage Act, 1872.

[a] *Substituted* for "Native Christian," by A.L.O., 1950.

## 3. Validation of irregular marriages.

All marriages which have already been solemnized under Part VI of the Indian Christian Marriage Act, 1872, between persons of whom one only was <sup>a</sup>[an Indian Christian], shall be as good and valid in law as if such marriages had been solemnized between persons of whom both were <sup>b</sup>[Indian Christians]:

Provided that nothing in this section shall apply to any marriage which has been judicially declared to be null and void, or to any case where either of the parties has, since the solemnization of such marriage and prior to the commencement of this Act, contracted a valid marriage.

[a] *Substituted* for "a Native Christian," by A.L.O., 1950. [b] *Substituted* for "Native Christians," *ibid*.

## OBJECTS AND REASONS

"This section as originally drafted proposed to validate all marriages of the kind referred to which may be solemnized within three months after the commencement of the Act. We have omitted this provision as we understand that the attention of all the Local Governments has already been drawn by the Government of India to the requirements of the law, and that all persons licensed under S. 9 of the Indian Christian Marriage Act, 1872, must by this time have been informed how the law really stands. We think therefore that any

further extension of this time is unnecessary, and might be mischievous. We have at the same time inserted a provision that the validation contemplated by S. 3 shall not apply to (1) marriages already judicially declared to be void, or to (2) cases in which, subsequent to the solemnisation of any such invalid marriage, and before the commencement of this Act, one of the parties has contracted a valid marriage. The equity of these additional provisions is obvious."

— S.C.R.

**4. Validation of records of irregular marriages.**

Certificates of marriages which are declared by the last foregoing section to be good and valid in law, and register-books, and certified copies of true and duly authenticated extracts therefrom, deposited in compliance with the law for the time being in force, in so far as the register-books and extracts relate to such marriages as aforesaid, shall be received as evidence of such marriages as if such marriages had been solemnized between persons of whom both were <sup>a</sup>[Indian Christians].

[a] *Substituted* for "Native Christians," by A.L.O., 1950.

*Note:*—This is a necessary corollary to the validation of marriages which were not valid under the Indian Christian Marriage Act, 1872, but which purported to be solemnized under Part VI of that Act.

**5. Application of Act to marriages under Act 5 of 1865.**

References in this Act to the Indian Christian Marriage Act, 1872, shall, so far as may be requisite, be construed as applying also to the corresponding portions of the <sup>a</sup>Indian Marriage Act, 1865.

[a] Repealed (except as to Straits Settlements) by Christian Marriage Act, 1872 (XV of 1872)

**6. Penalty for solemnizing irregular marriages.**

If any person licensed under section 9 of the said Act to grant certificates of marriage between <sup>a</sup>[Indian Christians] shall at any time after the commencement of this Act solemnize or affect to solemnize any marriage under Part VI of the said Act or grant any such certificate as therein mentioned, knowing that one of the parties to such marriage or affected marriage was at the date of such solemnization not a Christian, he shall be liable to have his license cancelled, and in addition thereto he shall be deemed to have been guilty of an offence prohibited by section 73 of the said Act, and shall be punishable accordingly.

[a] *Substituted* for "Native Christians," by A.L.O., 1950.

**[THE] MARRIED WOMEN'S PROPERTY ACT, 1874****(ACT III of 1874)**

[The Act printed here is as on 15-8-1960.]

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**V.—Husband's liability for Wife's debts.**

9. Husband not liable for wife's ante-nuptial debts. Proviso.

**VI.—Husband's liability for Wife's breach of trust or devastation.**

10. Extent of husband's liability for wife's breach of trust or devastation.

## STATEMENT OF OBJECTS AND REASONS

"The Indian Succession Act (X of 1865), section four, declares that no person shall by marriage acquire any interest in the property of the person whom he or she marries. This section, however, does not apply to marriages contracted before the 1st January 1866, and, in the case of persons married after that day, the Act does not protect the husband from liability from the debts of his wife contracted before marriage, nor does it expressly provide for the enforcement of claims by or against such wives.

The objects of the present Bill are, first, to extend the protection afforded to wives by section four of the Succession Act (so far as regards future wages and earnings and policies of insurance) to women married before 1st January 1866; secondly, to declare that a married woman may sue in her own name for any property which by force of the Succession Act, or the proposed Act, is her separate property; thirdly, to relieve the husband of a wife married after the 31st December 1865, from her ante-nuptial debts; and, lastly, to declare that any person entering into a contract with a wife (otherwise than as her husband's agent), shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered had she been unmarried.

Clause 4 (as to a wife's wages and earnings) is equivalent to the Married Women's Property Act, 33 & 34 Vic., Cap. 93, section one.

Clause 5 is copied from the first paragraph of section ten of that Act. It declares that any married woman may effect a policy of insurance on her own life or on her husband's life, on her own behalf, and that the amount assured shall be her separate property. As the law stands, if a wife effects such a policy (otherwise than out of her separate estate),

and dies in her husband's life-time, the husband, in the capacity of her administrator, becomes the absolute owner of the policy.

Clause 6 is equivalent to the second paragraph of the same section, the Official Trustee under Act 17 of 1864 replacing the trustee appointed in England by the Court of Chancery or the County Court. It provides that an insurance effected by a husband on his own life and expressed to be for his wife's benefit shall be deemed to be a trust for her benefit, and shall not be subject to the claims of his creditors, except, of course, when the transaction was intended to defraud them. This provision is necessitated by the doctrine that a husband as such has no insurable interest in his wife's life. It is true that, as the law stands, such a policy might be effected; but it would only be in the nature of a voluntary settlement, and it would be liable to the dangers to which such settlements are exposed.

Clauses 7 (as to legal proceedings by married women) and 8 (as to the non-liability of a husband for his wife's ante-nuptial debts) are respectively equivalent to sections eleven and twelve of the Married Women's Property Act.

Clause 9 declares that the law as to a wife's liability for her post-nuptial debts in conformity with a recent decision of Mr. Justice Phear (*Archer v. Watkins*, 8 Beng. L. R. 372). This decision is binding only in Bengal; the Bill will extend its authority throughout British India.

The Bill does not apply to married women who are Hindus, Muhammadans, Buddhists, Sikhs or Jains, and power is taken to exempt from its operation, either retrospectively or prospectively, the members of any race, sect or tribe to whom it is inexpedient to apply its provisions."

— Gazette of India, 1873, Part V, p. 457.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XXXVIII of 1920; XIII of 1923; XVIII of 1927; XXI of 1929; LXI of 1959.

—Adapted by A. O., 1957; A. C. A. O., 1948; A. L. O., 1950; 2 A. L. O., 1956.

—Adapted in Andhra Pradesh by Andh. A. L. O., 1954; Andh Pra A. L. O., 1957.

—Extended by Acts LIX of 1949; XXX of 1950; LXI of 1959.

—Repealed in Part by Acts XII of 1876; VI of 1888; XII of 1891; XXXIX of 1925.

## [THE] MARRIED WOMEN'S PROPERTY ACT, 1874

(ACT III OF 1874)\*

[24th February, 1874.]

*An Act to explain and amend the law relating to certain married women, and for other purposes.*

## Preamble.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day :

AND WHEREAS by the Indian Succession Act, 1865,<sup>b</sup> section 4 it is enacted that no person shall by marriage acquire any interest in the property of the

## Preamble — Note 1

[1] By using words "absolute owner" the legislature did not intend to make a declaration which would have effect of extending provisions of S. 4, Succession Act, but to des-

cribe its legal effect. The word 'absolute' is used with reference to husband not acquiring any interest in property. (74) 22 Suth W R 175 (179) (DB).

person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried.

AND WHEREAS by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives ;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1873, Pt. V, p. 457.

The Act has been declared to be in force in the Sonthal Parganas, *see* the Sonthal Parganas Settlement Regulation (III of 1872), S. 3. It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), S. 3 (a) to be in force in the following Scheduled Districts, namely :— The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gaz. of Ind., 1881, Pt. I, p. 504. The District of Lohardaga included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District, *see* Cal. Gaz., 1899, Pt. I, p. 44. It has been extended, by notification under S. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarai, *see* Gaz. of Ind., 1876, Pt. I, p. 505.

The Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 (1-1-1950) and to the States of Manipur, Tripura and Vindhya Pradesh by Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950] as amended by Act LXI of 1959, S. 4.

[b] *See* now Succession Act, 1925 (XXXIX of 1925), S. 20.

## I.—PRELIMINARY

### 1. Short title.

This Act may be called THE MARRIED WOMEN'S PROPERTY ACT, 1874.

### 2. Extent and application.

•[It extends to the whole of India except the State of Jammu and Kashmir.]

But nothing herein contained applies to any married women who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the <sup>A</sup>[State Government] may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom it may consider it impossible or inexpedient to apply such provisions.

The <sup>A</sup>[State Government] may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the <sup>A</sup>[Official Gazette].

b[\* \* \* \* \*].

[a] *Substituted* for the former paragraph, by Married Women's Property (Extension) Act, 1959 (LXI of 1959), S. 2 [w.e.f. 1-3-1960]. Any law corresponding to this Act in force in any territory to which it is extended by the said Extension Act shall, subject to certain savings, stand repealed on and from 1-3-1960—*See* Section 5 of the Extension Act. [b] The last paragraph was repealed by Succession Act, 1925 (XXXIX of 1925), S. 392 Schedule IX [30-9-1925].

## Section 2 — Note 1

[1] Act applies to Parsis. 1934 Bom 296 (298) [AIR V 21] : 58 Bom 513 (DB).

[2] Act applies to persons having an English domicile. (79) 4 Cal 140 (142) (DB).

[3] Section 2 does not exclude a Hindu male from taking advantage of S. 6 to effect an insurance policy on his life for the benefit

of his wife, or of his children or of his wife and children or any of them without executing a separate deed of trust. 1914 Mad 595 (604, 605) [AIR V 1] : 37 Mad 483 (FB).

[But *see* 1915 Cal 9 (10) [AIR V 2] (DB).]

[4] As to applicability of Act, *see* also S. 6.

### 3. Commencement. [*Repealed by the Repealing Act, 1876 (XII of 1876), S. 1 and Sch.*]

## II.—MARRIED WOMEN'S WAGES AND EARNINGS

### \*4. Married women's earnings to be their separate property.

The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

[a] Cf. the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), S. 1, now *repealed* by the Married Women's Property Act, 1882 (45 and 46 Vict., c. 75).

## III.—INSURANCES BY WIVES AND HUSBANDS

### \*5. Married woman may effect policy of insurance.

Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

[a] Cf. the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), S. 10, para 1 and *ibid.*, 1882 (45 and 46 Vict., c. 75), S. 11, para 1.

### \*6. Insurance by husband for benefit of wife.

<sup>b</sup>[(1)] A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

#### Section 6 - Note 1

[1] Section 6 means by a "policy" the document or documents evidencing the contract. Hence where under the terms of an insurance policy the proposal and the declaration have been made a part of the contract the statements contained in the declaration should be read as having been incorporated into the policy. 1938 Mad 604 (607) [AIR V 25]; ILR (1938) Mad 909 (FB).

[2] Policy to come under S. 6 must show that it was intended for benefit of wife or children. 1938 Mad 234 (236) [AIR V 25]; ILR (1938) Mad 335 (DB) \* 1938 Mad 635 (636) [AIR V 25]. (Policy payable "to the person or persons legally entitled thereto" does not fulfil requirements of S. 6.) \* 1938 Nag 321 (322) [AIR V 25]; ILR (1940) Nag 509. (Mere use of words in proposal "for family provision" does not bring policy under S. 6.) \* 1946 Sind 171 (175) [AIR V 33 C 53]; ILR (1946) Kar 154 (DB). (Mere assignment in favour of wife does not bring policy within S. 6 (1).) \* 1937 Sind 181 (188) [AIR V 24]; 31 Sind L R 98 (DB). (Mere use of words "payable to assured or his wife" does not create statutory trust.)

[3] Words "on the face of it" in S. 6 mean simply "expressly expressed". 1940 Cal 217 (218, 219) [AIR V 27]; ILR (1940) 1 Cal 64.

[4] Where the wife is not made beneficiary ab initio the policy is not effected by the husband for the benefit of his wife within S. 6 (1) and the mere fact that he made a subsequent nomination such as he was empowered to make under S. 39 of the Insurance Act does not make the policy one to which S. 6 (1) applies because of such nomination. 1958 All 569 (572) [AIR V 45 C 141] (DB) \* 1957 Andh Pra 757 (758) [AIR V 44 C 236]. (Section 6 of the Act does not apply to a nomination under S. 39 of the Insurance Act.) \* 1957 Mad 115 (118) (S) [AIR V 44 C 59]; ILR (1957) Mad 326 (DB). (Hence the money received from the Insurance Company by a wife on the policy can be attached for the debts of the assured.) \* 1958 Cal 275 (276) [AIR V 43 C 93]. (Hence the money payable under the Insurance policy is liable for attachment by the creditors of the assured unless he has expressed on the face of the policy to be for the benefit of the wife.)

[5] Words "for the benefit of his wife or of his wife and children or any of them"

When the sum secured by the policy becomes payable, it shall, unless, special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the [State] in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864<sup>d</sup> (to constitute an Office of Official Trustee), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

\*["(2) Notwithstanding anything contained in section 2, the provisions of sub-section (1) shall apply in the case of any policy of insurance such as is referred to therein which is effected—

(a) by any Hindu, Muhammadan, Sikh or Jain—

(i) in Madras, after the thirty-first day of December, 1913, or

(ii) in any other territory to which this Act extended immediately before the commencement<sup>t</sup> of the Married Women's Property (Extension) Act, 1959, after the first day of April, 1923, or

(iii) in any territory to which this Act extends on and from the commencement<sup>t</sup> of the Married Women's Property (Extension) Act, 1959, on or after such commencement<sup>t</sup>;

#### Section 6 — Note 1 (contd.)

mean "for the benefit of his wife or of his children or of his wife and children or any of them". 1914 Mad 595 (604) [AIR V 1] : 37 Mad 483 (FB).

[6] The only "children" contemplated by S. 6 are children born of marriage of the kind to which rest of the Act applies. 1915 Cal 9 (13) [AIR V 2] (DB).

[7] A policy effected by the husband for the benefit of his wife and children falls within the scope of S. 6 and it would amount to a trust despite the fact that the benefit has been made contingent as for instance upon the death of the husband before the wife. 1940 Cal 217 (218, 220) [AIR V 27] : I L R (1940) 1 Cal 64 \* 1948 Lah 21 (23, 24) [AIR V 35 C 7] (DB). (Where a husband effects a policy of insurance upon his own life making the amount payable to himself on attainment of a particular age or his wife on death if earlier, a trust is created in favour of the wife from the very birth of the policy even though the trust may be that of a contingent interest, and the husband cannot be allowed to destroy that trust by raising a loan from the Insurance Company on the security of his policy.) \* 1937 Mad 571 (574) [AIR V 24] : I L R (1937) Mad 990 (DB) \* 1938 Mad 604 (607) [AIR V 25] : I L R (1938) Mad 909 (FB) \* 1938 Mad 413 (414, 415) [AIR V 25] : I L R (1938) Mad 867.

[But see 1937 Mad 645 (646) [AIR V 24] \* 1932 Mad 220 (221) [AIR V 19] : 55 Mad 171. (Insurance company undertaking to pay 'assured or his wife A if he predeceased her'—There is valid trust in favour of A.) \* 1934 Bom 296 (298) [AIR V 21] : 58 Bom 513 (DB).]

[8] Nomination by husband on insurance policy preserving husband's right to cancel

nomination. Section 6 does not apply. 1948 Cal 44 (45) [AIR V 33 C 12].

[9] In case of statutory trust, assured would have no right to revoke it because money would be payable to Official Trustee. 1937 Sind 181 (188) [AIR V 24] : 31 Sind L R 98 (DB).

[10] Trust under S. 6 can be revoked by beneficiary under S. 78 (a), Trusts Act II of 1882. 1942 Mad 136 (138) [AIR V 29].

[11] Policy under S. 6 effected for wife or children is complete settlement. Husband cannot surrender same. 1915 Cal 9 (10) [AIR V 2] (DB).

[12] In cases contemplated by S. 6 beneficiaries have no cause of action apart from the Act. 1914 Mad 595 (608) [AIR V 1] : 37 Mad 483 (FB).

[13] If the policy of insurance is one to which S. 6 of the Act applies the person to sue on it on behalf of the widow of the deceased is the Official Trustee, unless he has disclaimed trusteeship in the matter or execution of the trust has become impracticable. 1934 Mad 264 (265) [AIR V 21] : 57 Mad 536 (DB).

[14] To enforce the provisions of S. 6 with regard to policy thereunder trustee must be appointed either by deed by the husband in his lifetime or by Court under Indian Trustees Act. The Court in appointing a trustee for this purpose is not bound to appoint the official trustee but can appoint any person. 1937 Cal 379 (380) [AIR V 24] : I L R (1937) 2 Cal 67. (The rule of interpretation with regard to inconsistent statutes is that where two Acts are inconsistent the latter will be read as having impliedly repealed the earlier. Therefore applying this principle, the provisions of the Official Trustees Act override S. 6, Married Women's Property Act.) \* 1955 N U C (Mad) 3895 [AIR V 42]. (Trustee



(b) by a Buddhist in any territory to which this Act extends, on or after the commencement<sup>f</sup> of the Married Women's Property (Extension) Act, 1959 :

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed—

- (i) before the first day of April, 1923, in any case to which sub-clause (i) or sub-clause (ii) of clause (a) applies; or
- (ii) before the commencement<sup>f</sup> of the Married Women's Property (Extension) Act, 1959, in any case to which sub-clause (iii) of clause (a) or clause (b) applies.]

[a] *Cf.* Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), S. 10, para 2 and *ibid.*, 1882 (45 and 46 Vict., c. 75), S. 11, para 2. [b] Section 6 was re-numbered as sub-section (1) of that section by Married Women's Property (Amendment) Act, 1923 (XIII of 1923), S. 2. [c] *Substituted* for "Part A State or Part C State" by 2 A. L. O., 1956. [d] *See* now Official Trustees Act, 1913 (11 of 1913). [e] *Substituted* for former sub-section (2), by Married Women's Property (Extension) Act, 1959 (LXI of 1959), S. 3 [1-3-1960]. [f] That is 1st March 1960.

#### STATE AMENDMENT

##### ANDHRA PRADESH

In sub-section (2), for "Madras" substitute "the State of Andhra as it existed immediately before the 1st November, 1956 or Madras."

—Andhra A. L. O., 1954 and Andhra Pra. A. L. O., 1957.

#### IV.—LEGAL PROCEEDINGS BY AND AGAINST MARRIED WOMEN

##### \*7. Married women may take legal proceedings.

A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865,<sup>b</sup> or of this Act, is her separate property; and she shall have, in her own

##### Section 6 — Note 1 (contd.)

referred to under S. 6 is not the Corporation sole created by the Official Trustees Act of 1913.]

[15] Under S. 6 making of money payable to official trustee is not condition precedent to create trust in favour of wife — Object of S. 6 is to create valid trust without any trust deed or document being executed — Not naming of trustee by insured is no ground to hold that money made payable to wife is not for her benefit. 1938 Sind 20 (23) [AIR V 25] : 32 Sind L R 138 (DB).

[16] Irrespective of any Official Trustees Act, existence of Official Trustees capable of receiving money is sufficient under S. 6 (2). He is payee. 1940 Cal 169 (170) [AIR V 27] : ILR (1939) 2 Cal 526.

[17] Insurance Company had its Head Office at Calcutta. Policy of insurance was effected through local agent at Madras — Claim by assured's widow: *Held*, Agent had no authority to accept proposals. Contract was effected in Calcutta and not in Madras and widow was, therefore, entitled to get insurance money on taking out letters of administration and money could not be paid to Official Trustee of Madras or Official Trustee of Bengal. 1933 Mad 764 (765) [AIR V 20] (DB).

[18] Sub-s. (2) renders sub-s. (1) applicable to policies effected by Hindus, etc. As to the policies effected by Hindus before 1-12-1923, see following cases. (13) 37 Bom 471 (479) (DB)\*1928 Cal 518 (521) [AIR V 15] : 55 Cal 1315 (DB)\*1915 Cal 9 (9, 10) [AIR V 2] (DB)\*1934 Mad 264 (266) [AIR V 21] : 57 Mad 536 (DB)\*1914 Mad 595 (608) [AIR V 1] : 37 Mad 483 (FB).

[19] Policies effected before 31-12-1923 are clearly governed by old Act though S. 2 of Act of 1923 does not refer to them. 1929 Mad 825 (825) [AIR V 16] : 52 Mad 936 (DB).

[See also 1942 Mad 136 (138) [AIR V 29]. (Section 6, as amended in 1923, would apply to a policy effected before 1913.)]

[20] Where, the insurance policies of a Hindu were taken after 1-4-1923, and there was no nomination, the wife would rank as a beneficiary and would be entitled to the policy money. 1945 Cal 458 (464) [AIR V 32] (DB).

[21] Section 6 applies to Mahomedans and would govern a policy effected by a Mahomedan male on his own life for the benefit of his children. 1942 Mad 136 (138) [AIR V 29].

##### Section 7 — Note 1

[1] Where husband and wife are subject to provisions of this Act, suit against husband by wife in her own name in trover to recover her property and articles of furniture or their value is maintainable under S. 7. (76) 1 Cal 285 (288) (DB).

[2] Separate property of married woman whose husband's domicile is English is alone bound by all debts, obligations and engagements incurred by her in management of business carried on by her alone and execution of any decree obtained against her in respect of such business should be limited to her separate property. Principle that she impliedly carries on business as agent of her husband is excluded by the Act. (79) 4 Cal 140 (142) (DB).

name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

[a] Cf. the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), S. 11, *repealed* by the Married Women's Property Act, 1882 (45 and 46 Vict., c. 75). [b] *See now* Succession Act, 1925 (XXXIX of 1925).

### 8. Wife's liability for post-nuptial debts.

If a married woman (whether married before or after the first day of January, 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree :

\*[Provided that nothing herein contained shall—

(a) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein or

(b) affect the liability of a husband for debts contracted by his wife's agency expressed or implied.]

[a] *Substituted* for the original Proviso, by Transfer of Property (Amendment) Supplementary Act, 1929 (XXI of 1929), S. 2.

### V.—HUSBAND'S LIABILITY FOR WIFE'S DEBTS

#### \*9. Husband not liable for wife's ante-nuptial debts.

A husband married after the thirty-first day of December, 1865 shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried :

#### Proviso.

Provided that nothing contained in this section shall b[\* \* \*] invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

[a] Cf. the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), S. 12. [b] The words "affect any suit instituted before the passing of this Act, nor" were *omitted* by Amending Act, 1891 (XII of 1891), S. 2 and Sch. I.

#### Section 8 — Note 1

[1] Act has no retrospective effect and is not intended to affect contracts made before and to alter rights of persons or obligations arising therefrom. ('74) 22 Suth W R 175 (179) (DB).

[2] Section 8 extends to separate property of married woman subject to restraint upon anticipation—Section 10, T. P. Act leaves the Act and decisions upon it untouched. ('80) 12 Cal 522 (530, 532) (DB) \* ('07) 30 Mad 378 (379, 380) (DB). (Income accruing due after date of decree against such married woman's separate property under S. 8 is not liable to attachment in execution of such decree.) \* ('95) 18 Mad 19 (21).

[3] Property settled on married woman to her separate use and without power of anticipation—She can charge it with payment of debts incurred by her subsequently to her

marriage—Such charge is valid and binding. ('87) 11 Bom 348 (354).

[4] Income of estate settled by will on unmarried daughter for her separate use—No power of anticipation—Daughter when married incurring debts—Simple money decree by consent—*Held*, income payable to daughter not attachable—Restraint valid even after marriage—Proviso to S. 8 held applied. 1938 Cal 486 (489) [AIR V 25] : ILR (1938) 2 Cal 233.

[5] Woman married before 1885—Suit in respect of her separate property—Husband need not be made co-defendant. ('82) 10 Cal L Rep 536 (536).

[6] Decree against married woman on her contract must be in the form laid down in *Scott v. Morley*, (1887) 20 Q B D 120. 1938 Cal 486 (489) [AIR V 25] : ILR (1938) 2 Cal 233.

\*[VI.—HUSBAND'S LIABILITY FOR WIFE'S BREACH OF TRUST OR  
DEVASTATION

**10. Extent of husband's liability for wife's breach of trust or devastation.**

Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased.]

[a] *Inserted by Succession (Amendment) Act, 1927 (XVIII of 1927), S. 3.*

**[THE INDIAN] MATRIMONIAL CAUSES (WAR  
MARRIAGES) ACT, 1948**

(ACT XL of 1948)

[The Act printed here is as on 15-8-1960.]

SECTIONS

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STATEMENT OF OBJECTS AND REASONS

"In the course of the judgment delivered in the case of *Mrs. Margaret Lierce v. Mr. George Albert Lierce*, the Additional District Judge, 24-parganas, Calcutta, observed as follows :

"The position of a woman domiciled in India who marries a foreigner not domiciled in India appears to be extremely anomalous in regard to the law of divorce. She can apparently obtain no relief under the Indian Divorce Act, 1869, and, inasmuch as the Indian and Colonial Divorce Jurisdiction Act, 1926, is applicable only to parties who are British subjects domiciled in England and Scotland, she can obtain no relief under that Act either . . . . The anomaly of this position is intensified in regard to a war-time marriage contracted by a woman domiciled in India with a foreigner serving temporarily in India on military duty ; and inasmuch as not a few war-time marriages of this character must presumably have been contracted between women domiciled in this country and foreigners temporarily resident here during the war, it would seem that there is a lacuna in the present law of divorce which ought to be filled."

Under the existing law, no Court in India

has jurisdiction to grant a decree of divorce, unless the parties are domiciled in India or in England or Scotland. In other cases the woman has no remedy unless she is in a position to institute proceedings in the country of her husband's domicile. A clear case, therefore, exists on the merits for the enactment in India of a counterpart of the Act in the United Kingdom called the Matrimonial Causes (War Marriages) Act, 1944, whereby in the case of a marriage celebrated during the war period, where the husband was at the time of the marriage domiciled outside India, and the wife was, immediately before the marriage, domiciled in India, the Indian Courts exercising jurisdiction under the Indian Divorce Act should be vested with jurisdiction in relation to proceedings for divorce as if both parties were at all material times domiciled in India. Such a law would obviously apply only in cases where the petitioner or the respondent professes the Christian religion. Hence the present Bill.

Provision is also included in the Bill for limiting the time within which proceedings for divorce or for nullity of marriage may be commenced under the Act."

—Gaz. of Ind., 1948, Part V, page 476.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by A.L.O., 1950; 3 A.L.O., 1956.

—Extended by Acts LIX of 1949, XXX of 1950.

[THE INDIAN] MATRIMONIAL CAUSES (WAR  
MARRIAGES) ACT, 1948  
(ACT XL OF 1948)\*

[3rd September, 1948.]

*An Act to confer upon Courts temporary jurisdiction in certain  
matrimonial causes.*

WHEREAS it is expedient to confer upon Courts b[\* \* \*] temporary jurisdiction in certain matrimonial causes;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1948, Pt. V, p. 476.

This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950], and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

[b] The words "in the Provinces of India" were omitted by A.L.O., 1950.

**1. Short title and extent.**

(1) This Act may be called THE INDIAN MATRIMONIAL CAUSES (WAR MARRIAGES) ACT, 1948.

(2) It extends to the whole of India, except \*[the territories which, immediately before the 1st November, 1956, were comprised in Part B States.]

[a] *Substituted* for "Part B States", by 3 A.L.O., 1956. Immediately before the 1st November, 1956, the following were the Part B States in India :— Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin.

**2. Definitions.**

In this Act, unless there is anything repugnant in the subject or context,—

- (a) "High Court" shall have the same meaning as in the Indian Divorce Act, 1869 ;
- (b) "marriage" includes a purported marriage which was void *ab initio*, and "husband" and "wife" shall be construed accordingly ;
- (c) "war period" means the period commencing on the 3rd day of September, 1939, and ending on the 31st day of March, 1946.

**3. Application of Act.**

The marriages to which this Act applies are marriages solemnized during the war period, where the husband was, at the time of the marriage, domiciled outside India, and the wife was immediately before the marriage, domiciled in India :

Provided that this Act shall not apply to any marriage if, since the solemnization thereof, the parties thereto have resided together in the country in which the husband was domiciled at the time of the residence.

*Explanation.*—For the purposes of the above proviso the whole of the United States of America, the whole of the United Kingdom and the whole of any British possession a[\* \* \*] shall each be treated as one country.

[a] The words "outside India" were omitted by the A. L. O., 1950.

**4. Temporary extension of jurisdiction of High Courts.**

In the case of any marriage to which this Act applies, the High Court shall have jurisdiction in and in relation to any proceedings for divorce or for nullity of marriage as if both parties were at all material times domiciled in India; and subject to the provisions of this Act, the provisions of the Indian Divorce Act, 1869, shall apply, so far as may be, in relation to any such proceedings instituted under this Act as if they were proceedings instituted under that Act :

Provided that this section shall not apply in relation to any proceedings for divorce or for nullity of marriage unless—

- (a) the petitioner or the respondent professes the Christian religion, and

(b) the proceedings for divorce or for nullity of marriage are commenced not later than three years from the commencement of this Act.

*Note.*—The Act is passed to give jurisdiction to Indian Courts, under the Indian Divorce Act, 1869, in regard to war-time marriages contracted by a woman domiciled in India with a foreigner serving temporarily in India on military duty.

### 5. Saving.

Nothing in this Act shall be deemed to extend or alter the jurisdiction of the High Court in, or in relation to, any proceedings for divorce or for nullity of marriage, where at the commencement of those proceedings the parties are domiciled anywhere in India.

### 6. Certain decrees and orders to be recognised.

The validity of any decree or order made in the United Kingdom by virtue of the Matrimonial Causes (War Marriages) Act, 1944<sup>a</sup> shall, by virtue of this Act, be recognised in all Courts in the States of India.

[a] 7 and 8 Geo. 6, c. 43.

### 7. Power to make rules.

The High Court may make such rules as may be necessary for the purpose of carrying out the objects of this Act.

## [THE] MEASURES OF LENGTH ACT, 1889

(ACT II of 1889)

[The Act printed here is as amended and adapted up to and including Act XXIV of 1934 and 2 A. L. O., 1956.]

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6. Inspection of certified measures by the public.

7. Certified measures to be kept by authorities required by existing enactments to keep measures of length.

## [THE] MEASURES OF LENGTH ACT, 1889.

(ACT II OF 1889)\*

[15th February, 1889.]

*An Act to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length* <sup>b</sup>[\* \* \*].

WHEREAS it is expedient to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length <sup>b</sup>[\* \* \*]; It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, *see* Gazette of India, 1888, pt. V, p. 41; for Report of the Select Committee, *see* *ibid.*, 1889, Pt. IV, p. 6.

The Act has been extended to States merged in the State of Bombay : *see* Bom. Act IV of 1950, S. 3 [30-3-1950].

Madhya Pradesh : *see* M. P. Act XII of 1950, S. 3 (1) [3-4-1950].

Even though this Act has been *repealed* by S. 18 of the Standards of Weights and Measures Act, 1956 (LXXXIX of 1956), still the Act is included in this Manual as it will remain an existing law until the provisions of the Act of 1956 are brought into force in the whole of India by notifications issued under section 1 (3) of that Act.

[b] The words "in the Provinces" were omitted by A. L. O., 1950.

**1. Title, extent and commencement.**

(1) This Act may be called THE MEASURES OF LENGTH ACT, 1889.

(2) It extends to <sup>a</sup>[the whole of India except <sup>b</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part B States] ]; and

(3) It shall come into force on such <sup>c</sup>day as the <sup>a</sup>[Central Government] may appoint in this behalf.

[a] *Substituted* for "all the Provinces of India", by A. L. O., 1950. [b] *Substituted* for "Part B States", by 2 A. L. O., 1956. Immediately before the 1st November, 1956, the following were the Part B States in India :—Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. [c] The Act came into force on 15-9-1889; *see* G.az. of Ind. 1889, Pt. I, p. 305.

**2. Standard yard.**

The imperial standard yard for the United Kingdom shall be the legal standard measure of length in <sup>a</sup>[Part A States and Part C States] and be called the standard yard.

[a] *Substituted* for "the Provinces" by A. L. O. 1950.

**3. Measure for determining length of standard yard.**

A copy, approved by the <sup>a</sup>[State Government] of the imperial standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the <sup>a</sup>[State] as the <sup>a</sup>[State Government] may prescribe, and shall be the standard for determining the length of the standard yard :

<sup>a</sup>[Provided that, until action is taken by the <sup>a</sup>[State Government] under this section, the copy of the imperial standard yard approved by the Central Government before the <sup>b</sup>commencement of Part III of the Government of India Act, 1935, and kept in the place within the limits of the town of Calcutta prescribed before that date by the Central Government, shall be the standard for determining the length of the standard yard in each State.]

[a] Added by the A. O. 1937. [b] Part III of the Government of India Act, 1935, came into force on 1-4-1937.

**4. Standard foot and inch.**

One-third part of the standard yard shall be called a standard foot and one-thirty-sixth part of such a yard shall be called a standard inch.

**5. Presumption in favour of accuracy of certified measures.**

Any measure having stamped thereon or affixed thereto a certificate purporting to be made <sup>a</sup>[<sup>b</sup>before the 26th January, 1950, by any Provincial Government] or on or after that date under the authority of the State Government], and stating that the measure is of the length of the standard yard or that a measure marked thereon as a foot or inch is of the length of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction published in an Official Gazette <sup>c</sup>[by order of the State Government], or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved.

[a] *Substituted* for "under the authority of the Governor-General in Council or of a Local Government," by A. O., 1937. [b] *Substituted* for "before the first day of April, 1937, under the authority of any Government in Part A States and Part C States", by 2 A. L. O. 1956. [c] *Substituted* for "by order of the Governor-General in Council or the Local Government" by A. O., 1937.

**6. Inspection of certified measures by the public.**

A public servant having in pursuance of such a direction charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare therewith or with any measure marked thereon any measure which such person may have in his possession.

## 7. Certified measures to be kept by authorities required by existing enactments to keep measures of length.

There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866, \*[\* \* \*] by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888, by the Municipal Commissioner in the City of Bombay under section 418 of the City of Bombay Municipal Act, 1888, and by the District Magistrate under section 20 of Regulation XII of 1827 of the Bombay Code, such certified measures of the standard yard, standard foot and standard inch as are mentioned in section 5.

[a] The words and figures "by the Commissioners in Calcutta under section 370 of the Calcutta Municipal Consolidation Act, 1888," were *omitted* by the Repealing and Amending Act, 1934 (XXIV of 1934), S. 2 and Sch. I.

## [THE INDIAN] MEDICAL COUNCIL ACT, 1956

(ACT CII of 1956)

[The Act printed here is as on 15-8-1960.]

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## SECTIONS

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THE FIRST SCHEDULE.

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## STATEMENT OF OBJECTS AND REASONS

"The objects of this Bill are to amend the Indian Medical Council Act, 1933 (XXVII of 1933)—

- (a) to give representation to licentiate members of the medical profession, a large number of whom are still practising in the country;
- (b) to provide for the registration of the names of citizens of India who have obtained foreign medical qualifications which are not at present recognised under the existing Act;
- (c) to provide for the temporary recognition of medical qualifications granted by medical institutions in countries outside India with which no scheme of reciprocity exists in cases where the medical practitioners concerned are attached for the time being to any medical institution in India for the purpose of teaching or research or for any charitable object;
- (d) to provide for the formation of a Committee of Post-graduate Medical Education for the purpose of assisting the

Medical Council of India to prescribe standards of post-graduate medical education for the guidance of Universities and to advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India;

- (e) to provide for the maintenance of an all-India register by the Medical Council of India, which will contain the names of all the medical practitioners possessing recognised medical qualifications.

2. The Indian Medical Council Act, 1933, does not now extend to Part-B States and it is now considered necessary that the Act should extend to the whole of India except Jammu and Kashmir. A few other minor amendments have also come to light in the course of the working of this Act, and as a matter of convenience it is now proposed to re-enact the existing Act with the above amendments."

—Gaz. of Ind. 1956, Extra, pt. II-Sec. (2), p. 399.

[THE INDIAN] MEDICAL COUNCIL ACT, 1956  
 (ACT CII OF 1956)\*

[30th December, 1956.]

*An Act to provide for the reconstitution of the Medical Council of India, and the maintenance of a medical Register for India and for matters connected therewith.*

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of India. 1956, Extra., Pt. II-Sec. 399.

**1. Short title, extent and commencement.**

- (1) This Act may be called THE INDIAN MEDICAL COUNCIL ACT, 1956.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date\* as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 1-11-1958 : see S. O. 2254 dated 28-10-1958 published in Gaz. of Ind. 1958, Pt. II-Sec. 3 (ii), p. 2080.

**2. Definitions.**

In this Act, unless the context otherwise requires,—

- (a) "approved institution" means a hospital, health centre or other such institution recognised by a University as an institution in which a person may undergo the training, if any, required by his course of study before the award of any medical qualification to him;
- (b) "Council" means the Medical Council of India constituted under this Act;
- (c) "India" means the territories to which this Act extends;



- (d) "Indian Medical Register" means the medical register maintained by the Council;
- (e) "medical institution" means any institution, within or without India, which grants degrees, diplomas or licences in medicine;
- (f) "medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery;
- (g) "prescribed" means prescribed by regulations;
- (h) "recognised medical qualification" means any of the medical qualifications included in the Schedules;
- (i) "regulation" means a regulation made under section 33;
- (j) "State Medical Council" means a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine;
- (k) "State Medical Register" means a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine;
- (l) "University" means any University in India established by law and having a medical faculty.

### **3. Constitution and composition of the Council.**

(1) The Central Government shall cause to be constituted a Council consisting of the following members, namely :

- (a) one member from each State other than a Union Territory, to be nominated by the Central Government in consultation with the State Government concerned;
- (b) one member from each University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no senate, by members of the Court;
- (c) one member from each State in which a State Medical Register is maintained, to be elected from amongst themselves by persons enrolled on such Register who possess the medical qualifications included in the First or the Second Schedule or in Part II of the Third Schedule;
- (d) seven members to be elected from amongst themselves by persons enrolled on any of the State Medical Registers who possess the medical qualifications included in Part I of the Third Schedule;
- (e) eight members to be nominated by the Central Government.

(2) The President and Vice-President of the Council shall be elected by the members of the Council from amongst themselves.

(3) No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council.

### **4. Mode of election.**

(1) An election under clause (b), clause (c) or clause (d) of sub-section (1) of section 3 shall be conducted by the Central Government in accordance with such rules as may be made by it in this behalf, and any rules so made may provide that pending the preparation of the Indian Medical Register in accordance with the provisions of this Act, the members referred to in clause (d) of sub-section (1) of section 3 may be nominated by the Central Government instead of being elected as provided therein.

(2) Where any dispute arises regarding any election to the Council, it shall be referred to the Central Government whose decision shall be final.

**5. Restrictions on nomination and membership.**

(1) No person shall be eligible for nomination under clause (a) of sub-section (1) of section 3 unless he possesses any of the medical qualifications included in the First and Second Schedules, resides in the State concerned, and, where a State Medical Register is maintained in that State, is enrolled on that register.

(2) No person may at the same time serve as a member in more than one capacity.

**6. Incorporation of the Council.**

The Council so constituted shall be a body corporate by the name of the Medical Council of India, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

**7. Term of office of President, Vice-President and members.**

(1) The President or Vice-President of the Council shall hold office for a term not exceeding beyond the expiry of his term as member of the Council.

(2) Subject to the provisions of this section, a member shall hold office for a term of five years from the date of his nomination or election or until his successor shall have been duly nominated or elected, whichever is longer.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council or, in the case of a member elected under clause (b) of sub-section (1) of section 3, if he ceases to be a member of the medical faculty of the University concerned, or in the case of a member elected under clause (c) or clause (d) of that sub-section, if he ceases to be a person enrolled on the State Medical Register concerned.

(4) A casual vacancy in the Council shall be filled by nomination or election, as the case may be, and the person nominated or elected to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated or elected.

(5) Members of the Council shall be eligible for re-nomination or re-election.

(6) Where the said term of five years is about to expire in respect of any member, a successor may be nominated or elected at any time within three months before the said term expires but he shall not assume office until the said term has expired.

**8. Meetings of the Council.**

(1) The Council shall meet at least once in each year at such time and place as may be appointed by the Council.

(2) Unless otherwise provided by regulations, fifteen members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

**9. Officers, committees and servants of the Council.**

The Council shall—

(1) constitute from amongst its members an Executive Committee and such other Committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act;

(2) appoint a Registrar who shall act as Secretary and who may also, if deemed expedient, act as Treasurer;

(3) employ such other persons as the Council deems necessary to carry out the purposes of this Act;

(4) require and take from the Registrar, or from any other employee, such security for the due performance of his duties as the Council deems necessary; and

(5) with the previous sanction of the Central Government, fix the remuneration and allowances to be paid to the President, Vice-President and members of the Council and determine the conditions of service of the employees of the Council.

#### **10. The Executive Committee.**

(1) The Executive Committee, hereinafter referred to as the Committee, shall consist of the President and Vice-President, who shall be members *ex officio*, and not less than seven and not more than ten other members who shall be elected by the Council from amongst its members.

(2) The President and Vice-President shall be the President and Vice-President respectively of the Committee.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any regulations which may be made in this behalf.

#### **11. Recognition of medical qualifications granted by Universities or medical institutions in India.**

(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

#### **12. Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity.**

(1) The medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) The Council may enter into negotiations with the Authority in any State or country outside India which by the law of such State or country is entrusted with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be recognised, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

(3) The Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Second Schedule by directing that an entry be made therein in respect of any medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

(4) Where the Council has refused to recommend any medical qualification which has been proposed for recognition by any Authority referred to in sub-

section (2) and that Authority applies to the Central Government in this behalf, the Central Government, after considering such application and after obtaining from the Council a report, if any, as to the reasons for any such refusal, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and the provisions of sub-section (2) shall apply to such notification.

**13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.**

(1) The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(2) The medical qualifications granted to a citizen of India—

(a) before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and

(b) before the first day of April, 1937, by medical institutions in the territories now forming part of Burma,

which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(3) The medical qualifications granted by medical institutions outside India which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country or State granting the qualification, or if he has not undergone any practical training in that country or State, he has undergone such practical training as may be prescribed.

(4) The Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India which is not included in the Second Schedule.

(5) Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third Schedule may apply to the Central Government to have such qualification recognised and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part I of the Third Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of Part I of the Third Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

**14. Special provision in certain cases for recognition of medical qualification granted by medical institutions in countries with which there is no scheme of reciprocity.**

(1) The Central Government after consultation with the Council may, by notification in the Official Gazette, direct that medical qualifications granted by medical institutions in any State or country outside India in respect of which a scheme of reciprocity for the recognition of medical qualifications is not in force, shall be recognised medical qualifications for the purposes of this Act or shall be so only when granted after a specified date;

Provided that medical practice by the doctors possessing such qualifications shall be limited to the institution to which they are attached for the time being for purposes of teaching, research or charitable work and shall be limited to

the period specified in this behalf by the Central Government by general or special order.

(2) In respect of any such medical qualification, the Central Government, after consultation with the Council, may, by notification in the Official Gazette, direct that it shall be a recognised medical qualification only when granted before a specified date.

*Note.*—Under this section, foreign medical qualifications are recognized only for limited purposes and for particular areas. Recognition under this section does not permit the holder of the qualification to practise the profession generally. It is only confined to teaching, research or charitable work attached to specified institutions.

### **15. Right of persons possessing qualifications in the Schedules to be enrolled.**

Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

### **16. Power to require information as to courses of study and examinations.**

Every University or medical institution in India which grants a recognised medical qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.

### **17. Inspection of examinations.**

(1) The Committee shall appoint such number of medical inspectors as it may deem requisite to attend at any or all of the examinations held by Universities or medical institutions in India for the purpose of recommending to the Central Government recognition of medical qualifications.

(2) Inspectors appointed under this section shall not interfere with the conduct of any examination but they shall report to the Committee on the sufficiency of every examination which they attend and on any other matters in regard to which the Committee may require them to report.

(3) The Committee shall forward a copy of any such report to the University or medical institution concerned, and shall also forward a copy with the remarks of the University or institution thereon, to the Central Government.

### **18. Visitors at examinations.**

(1) The Council may appoint such number of visitors as it may deem requisite to attend at any or all of the examinations held by Universities or medical institutions in India for the purpose of granting recognised medical qualifications.

(2) Any person, whether he is a member of the Council or not, may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any examination shall not be appointed as a visitor for the same examination.

(3) Visitors appointed under this section shall not interfere with the conduct of any examination but they shall report to the President of the Council on the sufficiency of every examination which they attend and on any other matters in regard to which the Council may require them to report.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Council otherwise directs :

Provided that if the Central Government requires a copy of the report of a visitor, the Council shall furnish the same.

### **19. Withdrawal of recognition.**

(1) When upon report by the Committee or by visitor appointed under section 18, it appears to the Council that the courses of study and examination

to be undergone in any University or medical institution in India in order to obtain a recognised medical qualification or that the standards of proficiency required from candidates at any examination held for the purpose of granting such qualification are not such as to secure to persons holding such qualification the knowledge and skill requisite for the efficient practice of medicine, the Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the State Government of the State in which the University or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University or medical institution, with an intimation of the period within which the University or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government, after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

## **20. Post-graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical education.**

(1) The Council may prescribe standards of post-graduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Post-graduate Medical Education Committee (hereinafter referred to as the Post-graduate Committee.)

(2) The Post-graduate Committee shall consist of nine members all of whom shall be persons possessing post-graduate medical qualifications and experience of teaching or examining post-graduate students of medicine.

(3) Six of the members of the Post-graduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members.

(4) For the purpose of considering Post-graduate studies in a subject, the Post-graduate Committee may co-opt, as and when necessary, one or more members qualified to assist it in that subject.

(5) The views and recommendations of the Post-graduate Committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the Post-graduate Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision.

## **21. The Indian Medical Register.**

(1) The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.

(2) It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India.

## **22. Supply of copies of the State Medical Registers.**

Each State Medical Council shall supply to the Council three printed copies of the State Medical Register as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Registrar of a State Medical Council shall inform the Council without delay of all additions to and other amendments in the State Medical Register made from time to time.

## **23. Registration in the Indian Medical Register.**

The Registrar of the Council may, on receipt of the report of registration of a person in a State Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register :

Provided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification.

## **24. Removal of names from the Indian Medical Register.**

(1) If the name of any person enrolled on a State Medical Register is removed therefrom in pursuance of any power conferred by or under any law relating to registration of medical practitioners for the time being in force in any State, the Council shall direct the removal of the name of such person from the Indian Medical Register.

(2) Where the name of any person has been removed from a State Medical Register on any ground other than that he is not possessed of the requisite medical qualifications or where any application made by the said person for restoration of his name to the State Medical Register has been rejected, he may appeal in the prescribed manner and subject to such conditions including conditions as to the payment of a fee as may be laid down in rules made by the Central Government in this behalf, to the Central Government, whose decision which shall be given after consulting the Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Medical Register.

## **25. Provisional registration for clinical practice.**

If the courses of study to be undergone for obtaining a recognised medical qualification include a period of training after a person has passed the qualifying examination and before such qualification is conferred on him any such person shall, on application made by him in this behalf, be granted provisional registration in a State Medical Register by the State Medical Council concerned in order to enable him to practise medicine in an approved institution for the period aforesaid.

## **26. Registration of additional qualifications.**

(1) If any person whose name is entered in the Indian Medical Register obtains any title, diploma or other qualification for proficiency in sanitary science, public health or medicine which is a recognised medical qualification, he shall, on application made in this behalf in the prescribed manner, be entitled to have an entry stating such other title, diploma or other qualification made against his name in the Indian Medical Register either in substitution for or in addition to any entry previously made.

(2) The entries in respect of any such person in a State Medical Register shall be altered in accordance with the alterations made in the Indian Medical Register.

**27. Privileges of persons who are enrolled on the Indian Medical Register.**

Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled.

**28. Person enrolled on the Indian Medical Register to notify change of place of residence or practice.**

Every person registered in the Indian Medical Register shall notify any transfer of the place of his residence or practice to the Council and to the State Medical Council concerned, within thirty days of such transfer, failing which his right to participate in the election of members to the Council or a State Medical Council shall be liable to be forfeited by order of the Central Government either permanently or for such period as may be specified therein.

**29. Information to be furnished by the Council and publication thereof.**

(1) The Council shall furnish such reports, copies of its minutes, abstracts of its accounts, and other information to the Central Government as that Government may require.

(2) The Central Government may publish in such manner as it may think fit, any report, copy, abstract or other information furnished to it under this section or under sections 17 and 18.

**30. Commissions of inquiry.**

(1) Whenever it is made to appear to the Central Government that the Council is not complying with any of the provisions of this Act, the Central Government may refer the particulars of the complaint to a Commission of inquiry consisting of three persons, two of whom shall be appointed by the Central Government, one being a Judge of a High Court, and one by the Council, and such Commission shall proceed to inquire in a summary manner and to report to the Central Government as to the truth of the matters charged in the complaint, and in case of any charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend the remedies, if any, which are in its opinion necessary.

(2) The Central Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit, and if the Council fails to comply with any such requirement, the Central Government may amend the regulations of the Council, or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the Commission.

(3) A Commission of Inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil Court under the Code of Civil Procedure, 1908.

**31. Protection of action taken in good faith.**

No suit, prosecution or other legal proceeding shall lie against the Government, the Council or a State Medical Council or any Committee thereof, or any officer or servant of the Government or Councils aforesaid for anything which is in good faith done or intended to be done under this Act.

**32. Power to make rules.**

(1) The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup> to carry out the purposes of this Act.



(2) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

[a] For Indian Medical Council Rules, 1957, see Gaz. of Ind., 1957, Pt. II-Sec. 3, p. 831.

### 33. Power to make regulations.

The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for—

- (a) the management of the property of the Council and the maintenance and audit of its accounts;
- (b) the summoning and holding of meetings of the Council, the times and places where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
- (c) the resignation of members of the Council;
- (d) the powers and duties of the President and Vice-President;
- (e) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings, and the conduct of business of such Committees;
- (f) the tenure of office, and the powers and duties of the Registrar and other officers and servants of the Council;
- (g) the particulars to be stated, and the proof of qualifications to be given in applications for registration under this Act;
- (h) the fees to be paid on applications and appeals under this Act;
- (i) the appointment, powers, duties and procedure of medical inspectors and visitors; and
- (j) any matter for which under this Act provision may be made by regulations.

### \*[34. Repeal of Act XXVII of 1933.

(1) The Indian Medical Council Act, 1933, is hereby repealed.

(2) Notwithstanding anything contained in this Act, until the Council is constituted in accordance with the provisions of this Act :—

- (a) the Medical Council of India as constituted immediately before the commencement<sup>b</sup> of this Act under the Indian Medical Council Act, 1933, with the addition of seven members nominated thereto by the Central Government from among persons enrolled on any of the State Medical Registers who possess the medical qualifications included in Part I of the Third Schedule to this Act (hereinafter referred to as the said Medical Council), shall be deemed to be the Council constituted under this Act and may exercise any of the powers conferred or perform any of the duties imposed on the Council; and any vacancy occurring in the said Medical Council may be filled up in such manner as the Central Government may think fit; and
- (b) the Executive Committee and other Committees of the said Medical Council as constituted immediately before the commencement<sup>b</sup> of this Act shall be deemed to be the Executive Committee and other Committees constituted under this Act.]

[a] *Substituted* and deemed always to have been *substituted* for the original section 34, by the Medical Council (Amendment) Act, 1958 (XXXVI of 1958), S. 2. [b] That is 1st November, 1958.

### OBJECTS AND REASONS

“As soon as the new Act [that is, the Indian Medical Council Act, 1956] is brought into force, the existing Council will cease to func-

tion as there is no provision for continuing the existing Council, and some time will necessarily have to elapse, before a new Council can be constituted under the 1956 Act. As it

is desirable that there should be continuity in the existence of the Medical Council, it is proposed to provide for the continuance of the existing Council after the commencement of

the new Act until the new Council is constituted." This section gives effect to this object.—S. O. R., Gaz. Ind., 1958, Extra., Pt. II, sec. 2, page 875.

### THE FIRST SCHEDULE

(See section 11)

#### RECOGNISED MEDICAL QUALIFICATIONS GRANTED BY UNIVERSITIES OR MEDICAL INSTITUTIONS IN INDIA.

University or Medical Institution	Recognised medical qualification	Abbreviation for registration
University of Allahabad ...	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Allahabad.
University of Bombay ...	Licentiate in Medicine and Surgery.	L.M.S., Bombay.
	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Bombay.
	Doctor of Medicine ...	M.D., Bombay.
	Master of Surgery ...	M.S., Bombay.
University of Calcutta	Licentiate in Medicine and Surgery.	L.M.S., Calcutta.
	Bachelor of Medicine.	M.B., Calcutta.
	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Calcutta.
	Doctor of Medicine ...	M.D., Calcutta.
	Master of Surgery ...	M.S., Calcutta.
	Master of Obstetrics ...	M.O., Calcutta.
University of Lucknow	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Lucknow.
	Doctor of Medicine ...	M.D., Lucknow.
	Master of Surgery ...	M.S., Lucknow.
University of Madras	Licentiate in Medicine and Surgery.	L.M.S., Madras.
	Bachelor of Medicine and Master of Surgery.	M.B., C.M., Madras.
	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Madras.
	Doctor of Medicine ...	M.D., Madras.
	Master of Surgery ...	M.S., Madras.
Patna University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Patna.
	Doctor of Medicine ...	M.D., Patna.
	Master of Surgery ...	M.S., Patna.
Andhra University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Andhra.
	Doctor of Medicine ...	M.D., Andhra.
	Master of Surgery ...	M.S., Andhra.
	Licentiate in Medicine and Surgery.	L.M.S., Andhra.
College of Physicians and Surgeons, Bombay.	Membership of College of Physicians and Surgeons, Bombay.	M.C.P.S., (Bombay). This shall be a recognised medical qualification only when granted after the 30th April, 1944.
	Fellowship of College of Physicians and Surgeons, Bombay, in Medicine, Pathology, Surgery or Dermatology.	F.C.P.S. (Med.) (Bombay). F.C.P.S. (Path.) (Bombay). F.C.P.S. (Surg.) (Bombay). F.C.P.S. (Derm.) (Bombay). These qualifications shall be recognised medical qualifications only when granted after the 1st April, 1954.
	*[Fellowship of the College of Physicians and Surgeons, Bombay in Mid-wifery and Gynaecology, Ophthalmology and Dip-	*[F.C.P.S. (Mid. & Gyn.) F.C.P.S. (Ophth.) D.P.B. (Dip. in Path. & Bact.) D.G.O. (Dip. in Gyn. & Obs.)

University or Medical Institution	Recognised medical qualification	Abbreviation for registration
	Iomas of the said College in Pathology, and Bacteriology Gynaecology and Obstetrics, and Child Health.]	D.C.H. (Dip. in Child Health.) These qualifications shall be recognised medical qualifications under this Schedule only when they are held by persons holding any other medical qualification specified in this Schedule.]
University of Agra	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., Agra.
University of East Punjab	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., East Punjab.
East Punjab State Medical Faculty	Licentiate in Medicine and Surgery.	L.M.S., East Punjab. This qualification shall be a recognised one only when granted on or after the 15th August, 1947, provided the holders thereof had passed the F.Sc., examination before taking up medical studies.
University of Delhi	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Delhi).
Gauhati University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Gauhati).
State Medical Faculty of West Bengal.	Membership of the State Medical Faculty of West Bengal.	M.M.F., (West Bengal).
University of Bihar	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Bihar).
University of Poona	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Poona).
Utkal University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Utkal).
Gujarat University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Gujarat).
Nagpur University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Nagpur).
Osmania University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Osmania).
University of Mysore	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Mysore). This qualification shall be a recognised qualification only when granted after the 31st December, 1932.
University of Rajputana	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Rajputana).
University of Baroda	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Baroda).
[Karnatak University	Bachelor of Medicine and Bachelor of Surgery.	M.B., B.S., (Karnatak).]
*[Aligarh University	Diploma in Ophthalmology.	D.O. (Dip. in Ophthalmology). This qualification shall be a recognised medical qualification under this Schedule only when it is held by a person holding any other medical qualification specified in this Schedule.]

[a] Inserted by Notification S.O. 1746, dated 1-8-1959, published in Gaz. of Ind., 1959, Pt. II-S. 3 (ii), p. 1926. [b] Inserted by Notification S.O. 2632 dated 10-12-1958, published in Gaz. of Ind., 1958, Pt. II-S. 3 (ii), page 2901.

## THE SECOND SCHEDULE

(See section 12)

## RECOGNISED MEDICAL QUALIFICATIONS GRANTED BY MEDICAL INSTITUTIONS OUTSIDE INDIA

Country	Qualifications		
United Kingdom	Registrable qualifications admitting primarily to the Medical Register granted by licensing bodies in the United Kingdom as shown in Table 'E' set out in the Medical Register printed and published from time to time under the direction of the General Medical Council of the United Kingdom in pursuance of the Medical Acts, 1858, 1886 and 1950.		
Other Countries	Title	Registrable qualifications	
		Nature of qualification as stated in diplomas	Abbreviations
1	2	3	4
<b>AUSTRALIA—</b>			
<i>New South Wales—</i>			
University of Sydney . . . . .	M. B. M. D. Ch. M. B. S.	Medicine and Surgery.	U. Sydney.
<i>South Australia—</i>			
University of Adelaide. (a) (c)	M.B., B. S. M. D. M. S.	Do.	U. Adelaide.
<i>Victoria—</i>			
University of Melbourne. (b)	M. B. M. D., B. S. M. S.	Do.	U. Melbourne.
<b>BURMA—</b>			
University of Rangoon . . . . .	M.B., B.S.	Do.	U. Rangoon.
<b>CANADA—</b>			
<i>Alberta—</i>			
College of Physicians and Surgeons of the Province of Alberta (b)	Member	Do.	C. P. and S. Alta.
University of Alberta (b) . . . . .	M. D.	Do.	U. Alberta.
<i>Manitoba—</i>			
College of Physicians and Surgeons of the Province of Manitoba (b)	Member	Do.	C. P. & S. Man.
University of Manitoba (c) . . . . .	M.D., M.D., C.M.	Medicine and Surgery.	U. Man.
<i>North West Territories—</i>			
College of Physicians and Surgeons of the Province of North-West Territories (b) . . . . .	Member	Medicine and Surgery	C. P. & S. N. W. Terr.
(When held in conjunction with License of the College of Physicians and Surgeons of the Province of Saskatchewan or the Province of Alberta)			
<i>Nova Scotia—</i>			
Nova Scotia Provincial Medical Board (a) (c)	L.M.S.	Do.	N. Scotia P. M. Bd.
Dalhousie University (a) (c) . . . . .	M.D., C. M.	Do.	Dalhousie U.
<i>Prince Edward Island</i>			
Prince Edward Island Medical Council (b) . . . . .	L.M.S.	Do.	M. Co. P. E. I.

<b>CEYLON—</b>			
Ceylon Medical College (a) (c)	L.M.S.	Do.	Ceylon M. Co.
<b>HONG KONG—</b>			
University of Hong Kong (a) (c)	M.B., B.S. M.D., M.S.	Do.	U. Hong Kong.
<b>ITALY—</b>			
All Royal Italian Universities (d)	M.D.	Do.	
<b>JAPAN—</b>			
All Imperial Universities (e)	M.B. (Igakushi) M.D. (Igaku Hakushi)	Do.	
Any Government of Prefectural special colleges designated by a Minister of Education of Japan (e)	M.B. (Igakushi)	Do.	
<b>MALTA—</b>			
Royal University of Malta	M.D.	Do.	U. Malta.
<b>NEWFOUNDLAND—</b>			
Newfoundland Medical Board (b)	L.M.S.	Do.	U. Nfld. M. Bd.
<b>NEW ZEALAND—</b>			
University of New Zealand	M.B., Ch. B. Ch. M., M.D.	Do.	U. N. Zealand.
<b>PAKISTAN—</b>			
Punjab University	L.M.S. M.B. M.B., B.S. M.D. M.S.	Do.	U. West Punjab.
Punjab State Medical Faculty	L.M.S.	Licentiate in Medicine and Surgery.	L.M.S. Punjab. This qualification shall be a recognised one only when granted before the 15th August, 1947 provided the holders thereof had passed F. Sc. Examination before taking up medical studies.
<b>UNION OF SOUTH AFRICA—</b>			
University of South Africa (b)	M.B., Ch. B.	Do.	U. S. Africa.
University of Cape Town (a) (c)	M.B., Ch. B. M.D., Ch. M.	Do.	U. Cape Town.
University of the Witwatersrand, Johannesburg (a) (c)	M.B., Ch. B. M.D., Ch. M.	Do. Do.	U. Witwatersrand.
<b>STRAITS SETTLEMENTS AND FEDERATED MALAY STATES —</b>			
The King Edward VII College of Medicine, Singapore (a) (c)	L.M.S.	Do.	Singapore Med. Coll.

(a) The qualification must be included in Table (F) of the British Medical Register as published from time to time by the General Medical Council of the United Kingdom.

(b) When granted on or before the 31st October, 1937.

(c) When granted on or before the 31st March, 1942.

(d) When granted on or before the 10th October, 1940.

(e) When granted on or before the 8th December, 1941.

## THE THIRD SCHEDULE

(See section 13)

## PART I

## RECOGNISED MEDICAL QUALIFICATIONS GRANTED BY MEDICAL INSTITUTIONS NOT INCLUDED IN THE FIRST SCHEDULE

Name of Medical Institution or licensing authority	Recognised medical qualification	Abbreviation
College of Physicians and Surgeons of Bombay.	Licentiate of the College of Physicians and Surgeons, Bombay. *[Fellowships of the College of Physicians and Surgeons Bombay in Midwifery and Gynaecology, Ophthalmology and Diplomas of the said College in Pathology, and Bacteriology, Gynaecology and Obstetrics, and Child Health.]	L. C. P. S. (Bom.) *[F.C.P.S. (Mid. & Gyn.) F. C. P. S. (Ophth.) D.P.B. (Dip in Path. & Bact.) D. G. O. (Dip in Gyn. & Obs.) D.C.H. (Dip in Child Health.) These qualifications shall be recognised medical qualifications under this Schedule only when they are held by persons holding any other medical qualification specified in this Schedule.]
State Medical Faculty, Bombay.	Licensed Medical Practitioner.	L.M.P. (Bom).
State Medical Faculty of Bengal.	Licentiate of the Medical Faculty, Bengal.  Licentiate in Medicine & Surgery (Nat.) West Bengal.	L.M.F. (Bengal). This qualification shall be a recognised medical qualification only when granted before the 15th August, 1947. L.M. & S. (Nat.) West Bengal.
State Medical Faculty of West Bengal.	Licentiate of the Medical Faculty, West Bengal. Licentiate in Medicine & Surgery (Nat.) West Bengal.	L.M.F. (West Bengal). L.M. & S. (Nat.) West Bengal.
Government of Bengal.	Licensed Medical Practitioner (Campbell Medical School). Diploma of Medical College (Bengal). Licensed Medical Practitioner (Dacca Medical School).	L. M. P. (Campbell Medical School). Dipl. Medl. Coll. (Bengal). L.M.P. (Dacca Medl. Sch.) This qualification shall be a recognised medical qualification only when granted before the 15th August, 1947.
State Medical Faculty of Uttar Pradesh.	Fellow of the State Medical Faculty (U. P.) Member of the State Medical Faculty. Licentiate of the State Medical Faculty.	F. S. M. F. (U.P.) M. S. M. F. (U.P.) L. S. M. F. (U.P.)
State Board of Medical Examination, U. P.	Licensed Medical Practitioner (U. P.)	L. M. P. (U.P.)
East Punjab State Medical Faculty.	Licentiate in Medicine and Surgery.	L.M.S., East Punjab. This qualification shall be a recognised one only when granted on or after the 15th August, 1947, to a person other than any person referred to in the entry relating to East Punjab State Medical Faculty in the First Schedule, provided he had

Name of Medical Institution or licensing authority	Recognised Medical qualification	Abbreviation
State Medical Faculty of Punjab	Fellow of the State Medical Faculty (Punjab).	passed the pre-medical examination. F.S.M.F. (Punjab).
	Member of the State Medical Faculty (Punjab).	M.S.M.F. (Punjab).
	Licentiate of the State Medical Faculty.	L.S.M.F. (Punjab).
Government of Punjab	— ... Licensed Medical Practitioner (Lahore).	M.P.L. (Lahore). This shall be a recognised medical qualification only when granted before the 15th August, 1947.
Hyderabad Government	... ... Licentiate in Medicine & Surgery (Osmania).	L.M. & S. (Osmania).
	... ... Licensed Medical Practitioner (Hyd.)	L.M.P. (Hyd.).
Government of Mysore	... ... Licensed Medical Practitioner (Mysore).	L.M.P. (Mysore).
Mysore Medical School	... ... Licensed Medical Practitioner (Mysore Medical School).	L.M.P. (Mysore Medl. Sch.)
Andhra University	... ... Licentiate in Medicine and Surgery (Andhra U.)	L.M. & S. (Andhra U.)
Assam Medical Examination Board.	... ... Licensed Medical Practitioner (Assam).	L.M.P. (Assam).
	... ... Licensed Medical Practitioner (B. W. Medical School, Dibrugarh).	L.M.P. (B. W. Medl. Sch. Dibrugarh).
Board of Examiners, Medical College, Madras.	... ... Licensed Medical Practitioner (Madras).	L.M.P. (Madras).
	... ... Diploma in Medicine & Surgery.	D.M.S. (Madras).
C. P. (or M. P.) Medical Examination Board.	... ... Licensed Medical Practitioner (C. P. or M. P.).	Lic. Apoth. (Madras). L.M.P. (C.P. or M.P.).
Orissa Medical Examination Board.	... ... Licensed Medical Practitioner (Orissa).	L.M.P. (Orissa).
Bihar and Orissa Medical Examination Board.	... ... Licensed Medical Practitioner (Bihar and Orissa).	L.M.P. (Bihar and Orissa).
	... ... Licensed Medical Practitioner, Temple Medical School, (Patna).	L.M.P. (Temple Medl. Sch. Patna).
King Edward Hospital Medical School, Indore.	... ... Diploma or certificate in Medicine and/or Surgery.	Diploma or certificate in Medicine and/or Surgery.
Travancore University	... ... Diploma or certificate in Medicine and/or Surgery.	Diploma or certificate in Medicine and/or Surgery.
Rangoon University	... ... Licentiate in Medicine and Surgery.	L.M. & S. (Rangoon U.).
		This qualification shall be a recognised medical qualification only when granted before the 1st April, 1937.
Burma Medical Examination Board.	... ... Licensed Medical Practitioner.	L.M.P. (Burma).
		This qualification shall be a recognised medical qualification only when granted before the 1st April, 1937.
*[Aligarh University	... ... Diploma in Ophthalmology.	D. O. (Diploma in Ophthalmology). This qualification shall be recognised medical qualification under this Schedule only when held by persons holding any other medical qualification specified in this Schedule.]

## PART II

## RECOGNISED MEDICAL QUALIFICATIONS GRANTED BY MEDICAL INSTITUTIONS OUTSIDE INDIA NOT INCLUDED IN THE SECOND SCHEDULE

M.D. (Berlin).  
 M.D. (Paris).  
 M.D. (Amsterdam).  
 M.D. (Freiburg, Germany).  
 M.D. (Vienna).  
 M.D. (Toronto, Canada).  
 M.D. (Heidelberg).  
 M.B.B.S. (Dacca).  
 M.D. (Bonn). (Specialist for Women's Diseases & Obstetrics).  
 M.B.B.S. (Ceylon).  
 M.D. (Munich).

## [THE INDIAN] MEDICAL DEGREES ACT, 1916

## (ACT VII of 1916)

[The Act printed here is as on 15-8-1960.]

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## SECTIONS

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## SCHEDULE.

## STATEMENT OF OBJECTS AND REASONS

"Acts of the Local Council provide in many of the larger provinces of British India for the registration of persons duly qualified to practise western medicine or surgery, and where such Acts have been passed, Medical Councils have been constituted with specific powers and duties.

It is now considered necessary to supplement this provincial legislation by an Imperial Act, restricting the right to issue degrees and diplomas in these systems of medicine and surgery to duly constituted authorities, so as to ensure that such degrees and diplomas are not issued to unqualified persons. It has been found that at present, diplomas are issued by private institutions to untrained or insufficiently trained persons, and that many of these diplomas are colourable imitations of those issued by recognised Universities and Corporations. The result is that recipients of such diplomas are able to pose to the public as possessing qualifications in medicine and surgery which they do not possess. The present

Bill is intended to remove the public inconvenience and injury arising out of the present state of affairs. It prohibits all persons, save certain specified authorities, from issuing or alleging that they are entitled to issue any degree or diploma in western medicine or surgery. It also penalises persons who voluntarily and falsely assume any medical title which is granted either by the General Council of Medical Education of the United Kingdom, or by the authorities constituted under the Act, and further prohibits the use of any colourable imitations of such titles.

The Bill does not affect the right of any person to exercise the profession of medicine or to practise as a physician or surgeon, provided he does not pretend to qualifications which he has not got; and its operation is rigidly restricted to the western methods of Allopathic medicine and surgery, Homoeopathic, Ayurvedic and Unani practitioners being excluded from the purview of the Bill."

—Gazette of India, 1915, Part V, page 76.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- |  |   |
|--|---|
| —Adapted by A. O. 1937; A. L. O., 1950; 2 A. L. O., 1956.      | —Extended by Acts LIX of 1949; XXX of 1950.                         |
| —Amended in Assam by Assam Act XVI of 1948;                    | —Extended in Bombay by Bom Act IV of 1950.                          |
| —Amended in Bihar by Bih. Act XX of 1949;                      | —Extended in Punjab by Punj. Acts XXX of 1958.                      |
| —Amended in Madhya Pradesh by C. P. and Berar Act LXV of 1948; | —Repealed in part in Bihar by Bih. Acts XXXI of 1951; XXIV of 1953. |
| —Amended in Madras by Mad. Act XX of 1940;                     | —Repealed in part in Orissa by Ori. Act VIII of 1957.               |



[THE INDIAN] MEDICAL DEGREES ACT, 1916  
(ACT VII OF 1916)\*

[16th March, 1916.]

*An Act to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles.*

WHEREAS it is expedient to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1915, Pt. V, p. 76; for Report of Select Committee, *see* *ibid*, 1916, Pt. V, p. 7.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States merged in the State of Bombay by Bom. Act IV of 1950, S. 3 [50-3-1950], and to the transferred territories in Punjab by Punj. Act XXX of 1958, S. 4 and Sch. II.

The Act so far as it relates to the Ayurvedic and Unani systems of medicine is repealed in the State of Bihar by Bih. Act XXXI of 1951, S. 56.

The Act so far as it relates to the Homoeopathic and Biochemic systems of medicine is repealed in the State of Bihar by Bih. Act XXIV of 1953, S. 54 and in the State of Orissa by Ori. Act VIII of 1957, S. 55.

#### STATE AMENDMENTS

##### ANDHRA PRADESH

Same as that of Madras.

##### ASSAM

In the Preamble, for the words "of such titles" *substitute* the words "of such titles and of titles implying qualifications in other systems of medicine."

—Assam Act XVI of 1948, S. 2 [20-10-1948].

##### BIHAR

In the long title and in the preamble after the words "western medical science" *insert* the words "or in the Indian system of medicine".

—Bihar Acts XX of 1949, S. 2 [1-12-1949] and XXIV of 1953, S. 54 [1-3-1955].

##### MADHYA PRADESH

Same as that of Assam.

—C. P. and Berar Act LXV of 1948, S. 2 [29-10-1948].

##### MADRAS

Same as that of Assam.

—Mad. Act XX of 1940, S. 2 [28-1-1941].

#### 1. Short title.

This Act may be called THE INDIAN MEDICAL DEGREES ACT, 1916.

#### 2. Definitions.

In this Act "western medical science" means the western methods of Allopathic medicine, Obstetrics and Surgery, but does not include the Homoeopathic or Ayurvedic or Unani system of medicine \* [and "States" means all <sup>b</sup> [the territories which immediately before the 1st November, 1956, were comprised] within Part A States and Part C States].

[a] *Added* by A.L.O., 1950. [b] *Substituted* for "the territories for the time being comprised", by 2 A.L.O., 1956. Immediately before the 1st November, 1956, the following were the Part A States and Part C States, namely:—

*Part A States*: Andhra, Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal;

*Part C States*: Ajmer, Bhopal, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh.

#### STATE AMENDMENT

##### BIHAR

For section 2 *substitute* the following:—

"2. *Definitions.* In this Act,—

(1) [Repealed by Bihar Act XXIV of 1953, S. 54 [1-3-1955].]

(2) "Indian system of medicine" means the Ayurvedic or Unani Tibbi system of medicine whether supplemented or not by such modern advances as the State Government may, from time to time, have determined; and

- (4) "Western medical science" means the western method of Allopathic medicine, Obstetrics and Surgery, but does not include the Indian, Homoeopathic or Biochemic system of medicine."

—Bih. Act XX of 1949, S. 3 [1-12-1949].

### 3. Right to confer degrees, etc.

The right of conferring, granting, or issuing in the <sup>A</sup>[States] degrees, diplomas, licences, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise western medical science, shall be exercisable only by the authorities specified in the Schedule, and by such other authority as the <sup>A</sup>[State Government] may, by notification<sup>A</sup> in the <sup>A</sup>[Official Gazette], and subject to such conditions and restrictions as <sup>b</sup>[it] thinks fit to impose, authorise in this behalf.

[a] For notifications authorising certain institutions in the various States to grant certificates, diplomas, degrees, etc., see General Statutory Rules and Orders, Vol. IV, pp. 513-515. [b] *Substituted* for "he" by A.O., 1937.

#### STATE AMENDMENT

##### BIHAR

After the words "western medical science" insert the words "or the Indian system of medicine".

—Bih. Acts XX of 1949, S. 4 [1-12-1949] and XXIV of 1953, S. 54 [1-3-1955].

### 4. Prohibition of unauthorized conferment of degrees, etc.

Save as provided by section 3, no person in the <sup>A</sup>[States] shall confer, grant, or issue, or hold himself out as entitled to confer, grant, or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise western medical science.

#### STATE AMENDMENT

##### BIHAR

After the words "western medical science" insert the words "or the Indian system of medicine".

—Bih. Acts XX of 1949, S. 4 [1-2-1949] and XXIV of 1953, S. 54 [1-3-1955].

### 5. Contravention of section 4.

Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to one thousand rupees; and, if the person so contravening is an association, every member of such association who knowingly and wilfully authorises or permits the contravention, shall be punishable with fine which may extend to five hundred rupees.

### 6. Penalty for falsely assuming or using medical titles.

Whoever voluntarily and falsely assumes, or uses any title or description or any addition to his name implying that he holds a degree, diploma, licence or certificate conferred, granted or issued by any authority referred to in section 3, or recognized by the General Council of Medical Education of the United Kingdom, or that he is qualified to practise western medical science, shall be punishable with fine which may extend to two hundred and fifty rupees, or, if

#### Section 5 — Note 1

[1] Accused led people to believe that his college styled as "The Dacca Medical College" was an allopathic college, which could award allopathic diplomas, and issued diplomas conferring 'M. M. B.' degrees to certain persons which implied that holders could practice Western medical science: *Held*, accused was guilty of an offence under S. 5. 1933 Cal 456 (457) [AIR V 20]: 34 Cri L Jour 603.

#### Section 6 — Note 1

[1] Regard must be had to all the words used by a person before and after his name and the manner of their use in determining

the intention of that person and the effect of these words and whether they would render him liable for conviction for an offence under this section. 1944 Lah 384 (384) [AIR V 31]: 46 Cri L Jour 251 (DB).

[2] Styling oneself M. D. B. i. e., "Doctor of Bio-Chemic Medicines" or L. M. H. i. e., Licentiate of Homoeopathic Medicines does not by itself constitute an offence. 1925 Sind 71 (71) [AIR V 12]: 17 Sind L R 344: 25 Cri L Jour 709 (DB).

[3] *Quaere*.—Whether assumption of title "Doctor" is an offence. 1925 Sind 71 (71) [AIR V 12]: 17 Sind L R 344: 25 Cri L Jour 709 (DB).

he subsequently commits, and is convicted of, an offence punishable under this section, with fine which may extend to five hundred rupees :

Provided that nothing in this section shall apply to the use by any person of any title, description, or addition which, prior to the commencement of this Act, he used in virtue of any degree, diploma, licence or certificate conferred upon, or granted or issued to him.

#### STATE AMENDMENT

##### BIHAR

(i) After the words "western medical science" insert the words "or the Indian system of medicine".

(ii) For the proviso to section 6, substitute the following proviso :—

"Provided that nothing in this section shall apply to the use by any person qualified to practise western medical science of any title, description or addition which prior to the 16th March, 1916, he used in virtue of any degree, diploma, licence or certificate conferred upon or granted or issued to him to practise such western medical science."

—Bih. Act XX of 1949, S. 4 [1-12-1949].

#### STATE AMENDMENTS

##### SECTION 6-A

##### ANDHRA PRADESH

Same as that of Madras.

##### ASSAM

After section 6, insert the following new section :—

"6-A. *Penalty for unauthorised use of titles, etc. implying medical qualifications.*—(1) No person shall add to his name any title, description, letters or abbreviations which imply that he holds a degree, diploma, licence or certificate as his qualification to practise any system of medicine unless—

(a) he actually holds such degree, diploma, licence or certificate; and

(b) such degree, diploma, licence or certificate—

(i) is recognised by any law for the time being in force in India; or

(ii) has been conferred, granted or issued by an authority referred to in section 3; or

(iii) has been recognised by the General Council of Medical Education of the United Kingdom; or

(iv) in cases not falling under sub-clause (i), sub-clause (ii) or sub-clause (iii), has been conferred, granted or issued by an authority empowered, or recognised as competent, by the State Government to confer, grant or issue such degree, diploma, licence or certificate.

(2) Whoever contravenes the provisions of sub-section (1) shall, notwithstanding anything contained in section 6, be punished in the case of first conviction, with fine which may extend to two hundred and fifty rupees and in the case of subsequent conviction, with fine which may extend to five hundred rupees."

—Assam Act XVI of 1948, S. 3 [20-10-1948].

##### MADHYA PRADESH

Same as that of Assam

—C. P. and Berar Act LXV of 1948, S. 3 [29-10-1948].

##### MADRAS

Same as that of Assam

—Mad. Act XX of 1940, S. 3 [28-1-1941].

#### 7. Cognizance of offences.

No Court shall take cognizance of an offence punishable under this Act, except upon complaint made by order of the <sup>A</sup>[State Government], or upon complaint made, with the previous sanction of the <sup>A</sup>[State Government], by a Council of Medical Registration established by any enactment for the time being in force in the <sup>A</sup>[State].

#### 8. Jurisdiction of Magistrates.

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

#### SCHEDULE

(See section 3.)

1. Every University established by <sup>a</sup>[a Central Act].
2. The State Medical Faculty in Bengal.
3. The College of Physicians and Surgeons of Bombay.
4. The Board of Examiners, Medical College, Madras.

[a] Substituted for "an Act of the Central Legislature," by A. L. O., 1950.

## STATE AMENDMENT

## BIHAR

After item 4, add the following items, namely :—

"5. A Board of the Indian, system of medicine constituted by an Act of the State Legislature or recognised by the State Government.

6. The Bihar Sanskrit Association."

—Bih. Acts XX of 1949, S. 5 [1-12-1949] and XXIV of 1953 [1-3-1955].

[THE] MEDICINAL AND TOILET PREPARATIONS  
(EXCISE DUTIES) ACT, 1955  
(ACT XVI of 1955)

[The Act printed here is as on 15-8-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"By virtue of Item 40 in List II in the Seventh Schedule to the Government of India Act, 1935, medicinal and toilet preparations containing alcohol, etc., were subjected to Provincial excise duties. Each Provincial Government fixed its own rates of duty and followed its own procedure to regulate the imports from and exports to other Provinces of such preparations, so that the industry manufacturing these preparations had to contend with several handicaps imposed by such diversities in rates and procedure. In order to secure uniformity, the entry relating to excise duty on medicinal and toilet preparations containing alcohol, etc., was transferred under the Constitution from the State list to the Union List.

2. The present Bill is intended to imple-

ment this provision in the Constitution, and proposes uniform rates of excise duty and a uniform procedure for the collection thereof. In the case of Part A and Part B States, the actual collection of the duties will be left to the Governments of the States, as required by Article 268 of the Constitution. The existing duties, and the existing procedure for collection under the pre-Constitution statutes of the States which are at present protected under Article 277 will be replaced by the rates and the procedure proposed in the Bill.

3. The duties specified in the Schedule are, generally speaking, based on the recommendations of an Expert Committee appointed by Government."

—Gaz. of Ind., 1954, Extra.,  
Pt. II-S. 2, page 596.

[THE] MEDICINAL AND TOILET PREPARATIONS  
(EXCISE DUTIES) ACT, 1955  
(ACT XVI OF 1955)\*

[27th April, 1955.]

*An Act to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic.*

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1954, Extra., Pt. II-Sec. 2, p. 596.

PRELIMINARY

**1. Short title, extent and commencement.**

(1) This Act may be called THE MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTIES) ACT, 1955.

(2) It extends to the whole of India.

(3) It shall come into force on such date\* as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 1-1-1957, *see* S. R. O. 892, D/- 9-3-1957, published in Gaz. of Ind., 1957, Pt. II-Sec. 3, page 602.

**2. Definitions.**

In this Act, unless the context otherwise requires,—

(a) “alcohol” means ethyl alcohol of any strength and purity having the chemical composition  $C_2H_5OH$ ;

(b) “collecting Government” means the Central Government or, as the case may be, the State Government which is entitled to collect the duties levied under this Act;

(c) “dutiable goods” means the medicinal and toilet preparations specified in the Schedule as being subject to the duties of excise levied under this Act ;

(d) “excise officer” means an officer of the Excise Department of any State and includes any person empowered by the collecting Government to exercise all or any of the powers of an excise officer under this Act;

(e) “Indian hemp” has the same meaning as the word “hemp” in the Dangerous Drugs Act, 1930 ;

(f) “manufacture” includes any process incidental or ancillary to the completion of the manufacture of any dutiable goods ;

(g) “medicinal preparation” includes all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals ;

(h) “narcotic drug” or “narcotic” means a substance (other than alcohol) which when swallowed or inhaled by, or injected into, a human being induces drowsiness, sleep, stupefaction or insensibility in the human being and which is a dangerous drug within the meaning of the Dangerous Drugs Act, 1930 ;

(i) “opium” has the same meaning as in the Dangerous Drugs Act, 1930 ;

(j) “prescribed” means prescribed by rules made under this Act;

(k) “toilet preparation” means any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description, or any substance intended to cleanse, improve or alter the complexion, skin, hair or teeth, and includes deodorants and perfumes.

### LEVY AND COLLECTION OF DUTIES

#### 3. Duties of excise to be levied and collected on certain goods.

(1) There shall be levied duties of excise, at the rates specified in the Schedule, on all dutiable goods manufactured in India.

(2) The duties aforesaid shall be leviable—

(a) where the dutiable goods are manufactured in bond, in the State in which such goods are released from a bonded-warehouse for home consumption, whether such State is the State of manufacture or not;

(b) where the dutiable goods are not manufactured in bond, in the State in which such goods are manufactured.

(3) Subject to the other provisions contained in this Act, the duties aforesaid shall be collected in such manner as may be prescribed.

*Explanation.* — Dutiable goods are said to be manufactured in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, opium, Indian hemp or other narcotic drug or narcotic which is to be used as an ingredient in the manufacture of such goods.

#### 4. Rebate of duty on alcohol, etc., supplied for manufacture of dutiable goods.

Where alcohol, opium, Indian hemp or other narcotic drug or narcotic had been supplied to a manufacturer of any dutiable goods for use as an ingredient of such goods by, or under the authority of, the collecting Government and a duty of excise on the goods so supplied had already been recovered by such Government under any law for the time being in force, the collecting Government shall, on an application being made to it in this behalf, grant in respect of the duty of excise leviable under this Act, a rebate to such manufacturer of the excess, if any, of the duty so recovered over the duty leviable under this Act.

*Note:* — Method for recovery of duty levied under this section is given in the next section.

Punishment for evasion of the duty is prescribed by S. 7. Besides punishment, the Court is empowered under S. 8 to order forfeiture to the Collecting Government of any dutiable goods in respect of which the Court is satisfied that an offence under this Act is committed. It may also order forfeiture of any alcohol, drugs, materials by means of which the offence has been committed and of any receptacles, packages, coverings in which any such goods or articles are contained and the animals, vehicles, vessels, or other conveyances used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods.

#### 5. Recovery of sums due to Government.

In respect of the duty of excise and any other sums of any kind payable to the collecting Government under any of the provisions of this Act or of the rules made thereunder, the excise officer empowered by the said rules to levy such duty or require the payment of such sums, may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due, which may be in his hands or under his disposal or control or may recover the amount by attachment and sale of dutiable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the sum and send it to the Collector of the district in which such person resides or conducts his business, and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified therein in the same manner as an arrear of land revenue.

#### 6. Certain operations to be subject to licences.

(1) The Central Government may, by notification in the Official Gazette, provide that from such date as may be specified in the notification, no person shall engage in the production or manufacture of any dutiable goods or of any

specified component parts or ingredients of such goods or of specified containers of such goods or of labels of such containers except under the authority and in accordance with the terms and conditions of a licence granted under this Act.

(2) Every licence under sub-section (1) shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars as may be prescribed.

## **7. Offences and penalties.**

If any person—

- (a) contravenes any of the provisions of a notification issued under section 6 ; or
- (b) evades the payment of any duty of excise payable under this Act ; or
- (c) fails to supply any information which he is required by rules made under this Act to supply or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information ; or
- (d) attempts to commit or abets the commission of any offence mentioned in clause (a) or clause (b),

he shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

## **8. Power of Courts to order forfeiture.**

Any Court trying any offence under section 7 may order the forfeiture to the collecting Government of any dutiable goods in respect of which the Court is satisfied that an offence under this Act has been committed, and may also order the forfeiture of any alcohol, drugs or materials by means of which the offence has been committed and of any receptacles, packages or coverings in which any such goods or articles are contained and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods.

## **POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS**

### **9. Power to arrest.**

(1) Any excise officer duly empowered by rules made in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made thereunder, who, on demand of any excise officer duly empowered by rules made under this Act, refuses to give his name and residence or who gives a name or residence which such officer has reason to believe to be false may be arrested by such officer in order that his name and residence may be ascertained.

### **10. Power to summon persons to give evidence and produce documents in inquiries under this Act.**

(1) Any excise officer duly empowered by rules made in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things under sub-section (1) may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person concerned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent as such officer may direct and all persons so summoned

shall be bound to state the truth on any subject respecting which he is examined or make statements and produce such documents and other things as may be required :

Provided that the exemptions under section 132 and section 133 of the Code of Civil Procedure, 1908 shall apply to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

### **11. Officers required to assist Excise Officers.**

All officers of Customs and Central Excise, and such other officers of the Central Government as may be specified in this behalf, and all police officers and all officers engaged in the collection of land revenue are hereby empowered and required to assist excise officer in the execution of this Act.

### **12. Owners or occupiers of land to report manufacture of contraband dutiable goods.**

Every owner or occupier of land and the agent of any such owner or occupier in charge of the management of that land, if dutiable goods are manufactured thereon in contravention of the provisions of this Act or the rules made thereunder, shall, in the absence of reasonable excuse, be bound to give notice of such manufacture to a Magistrate or to an officer of the Excise, Customs, Police or Land Revenue Department immediately the fact comes to his notice.

### **13. Punishment for connivance at offences.**

Any owner or occupier of land or any agent of such owner or occupier in charge of the management of that land, who wilfully connives at any offence against the provisions of this Act or any rules made thereunder shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.

### **14. Searches and arrests how to be made.**

All arrests and searches made under this Act or under any rules made thereunder shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating respectively to searches and arrests under that Code.

### **15. Disposal of persons arrested.**

(1) Every person arrested under this Act shall be forwarded without delay to the nearest excise officer empowered to send persons so arrested to a Magistrate or if there is no such excise officer within a reasonable distance to the officer in charge of the nearest police station.

(2) The officer in charge of a police station to whom any person is forwarded under sub-section (1) shall either admit him to bail to appear before a Magistrate having jurisdiction, or in default of bail forward him without delay in custody to such Magistrate.

### **16. Inquiry how to be made by excise officers against arrested persons forwarded to them.**

(1) When any person is forwarded under section 15 to an excise officer empowered to send persons so arrested to a Magistrate, the excise officer shall proceed to inquire into the charge against him.

(2) For the purpose of sub-section (1), the excise officer may exercise the same powers, and shall be subject to the same provisions, as the officer in



charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case :

Provided that—

- (a) if the excise officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody without delay to such Magistrate;
- (b) if it appears to the excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without surities as the excise officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction and shall make a full report of all the particulars of the case to his official superior.
- (3) All officers exercising any powers under section 15 or this section shall so exercise their powers as to ensure that every person who is arrested and detained in custody is produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate.

### **17. Vexatious search, seizure, etc., by excise officer.**

(1) Any officer exercising powers under this Act or under the rules made thereunder who—

- (a) without reasonable ground of suspicion searches or causes to be searched any place, conveyance or vessel;
- (b) vexatiously and unnecessarily detains, searches or arrests any person;
- (c) vexatiously and unnecessarily seizes the movable property or any person on pretence of seizing or searching for any article liable to confiscation under this Act;
- (d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

### **18. Failure of excise officers on duty.**

Any excise officer who ceases or refuses to perform, or withdraws himself from, the duties of his office, unless he had obtained the express written permission of his superior officer or has given such superior officer two months' notice in writing of his intention or has other lawful excuse, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

## **SUPPLEMENTARY PROVISIONS**

### **19. Power to make rules.**

(1) The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup> to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (i) provide for the assessment and collection of duties levied under this Act, the authorities by whom functions under this Act are to be dis-

charged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of duty not paid;

- (ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government may think fit, the manufacture, or any process of the manufacture, of dutiable goods or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;
- (iii) regulate the removal of dutiable goods from the place where they are stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market;
- (iv) regulate the production or manufacture of any process of production or manufacture, the possession and storage of dutiable goods or of any component parts or ingredients or containers thereof, so far as such regulation is essential for the proper levy and collection of duties levied under this Act;
- (v) provide for the employment of excise officers to supervise the carrying out of any rules made under this Act;
- (vi) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for excise officers employed to supervise the carrying out of rules made under this Act and prescribe the scale of such accommodation;
- (vii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering dutiable goods into and clearing goods from such warehouses or in the movement of dutiable goods from one bonded warehouse to another;
- (viii) provide for the distinguishing of excisable goods which have been manufactured under licence, of materials which have been imported under licence and of goods on which duty has been paid or which are exempt from duty under this Act ;
- (ix) impose on persons engaged in the manufacture, storage or sale (whether on their own account or as brokers or commission agents) so far as such imposition is essential for the proper levy and collection of the duties levied under this Act, the duty of furnishing information, keeping records and making returns and prescribe the nature of such information and form of such records and returns, the particulars to be contained therein and the manner in which they shall be verified;
- (x) require that dutiable goods shall not be sold or offered or kept for sale except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;
- (xi) provide for the issue of licences and transport permits and the fees, if any, to be charged therefor ;
- (xii) provide for the detention of dutiable goods, plant, machinery or material for the purpose of exacting the duty;
- (xiii) provide for the confiscation of dutiable goods in respect of which a breach of any rule made under this Act has been committed, and also for the confiscation of any alcohol, drugs or materials by means of which the breach has been committed and of any receptacle, packages or covering in which such goods or articles are contained, and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods;
- (xiv) provide for the levy of a penalty not exceeding two thousand rupees for a breach of any rule made under this Act;

- (xv) provide for the procedure in connection with such confiscation and the imposition of such penalty, the maximum limits up to which particular classes of excise officers may adjudge such confiscation or penalty, appeals from orders of such officers and revision of such orders by some higher authority, the time-limit for such appeals and revisions and the disposal of goods and articles confiscated;
  - (xvi) authorise and regulate the compounding of offences against, or liabilities incurred under, this Act or the rules made thereunder;
  - (xvii) authorise and regulate the inspection of factories and provide for the taking of samples or for the making of tests of any substance produced therein and for the inspection or search of any place, conveyance or vessel used for the production, storage, sale or transport of dutiable goods in so far as such inspection or search is essential for the proper levy and collection of the duties levied under this Act;
  - (xviii) provide for the grant of a rebate of the duty paid on dutiable goods which are exported out of India or shipped for consumption on a voyage to any port outside India;
  - (xix) exempt any dutiable goods from the whole or any part of the duty levied under this Act where in the opinion of the Central Government, it is necessary to grant such exemption in the interest of the trade or in the public interest;
  - (xx) notify in the Official Gazette lists of the names and descriptions of preparations which would fall for assessment under any particular item of the Schedule or for regulating their manufacture, transport and distribution;
  - (xxi) authorise particular classes of excise officers to provide by written instructions for supplemental matters arising out of any rule made by the Central Government under this section.
- (3) Where any confiscation or penalty has been adjudged in respect of a breach of any rule under this Act, which is also an offence under section 7, the person concerned shall not be prosecuted under that section.

(4) All rules made by the Central Government under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

[a] For the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, *see* Gaz. of Ind. 1957, Pt. II, Sec. 3, p. 502.

## **20. Bar of suits and limitation of suits and other legal proceedings.**

(1) No suit or other legal proceeding shall lie against the collecting Government or against any officer in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted against the collecting Government or against any officer for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

## **21. Repeals and savings.**

If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed :

Provided that all rules made, notifications issued, licences or permits granted, powers conferred under any law hereby repealed shall, so far as they are not inconsistent with this Act, have the same force and effect as if they had been respectively made, issued, granted or conferred under this Act and by the authority empowered hereby in that behalf.

## THE SCHEDULE

(See section 3)

Item No.	Description of dutiable goods.	Rate of duty.
1.	Medicinal and toilet preparations, containing alcohol, which are prepared by distillation or to which alcohol has been added, and which are capable of being consumed as ordinary alcoholic beverages.	Rupees seventeen and annas eight per gallon of the strength of London proof spirit.
2.	Medicinal and toilet preparations not otherwise specified containing alcohol—	
	(i) Ayurvedic preparations containing self-generated alcohol, which are not capable of being consumed as ordinary alcoholic beverages.	Nil.
	(ii) Ayurvedic preparations containing self-generated alcohol, which are capable of being consumed as ordinary alcoholic beverages.	Rupees three per gallon.
	(iii) All others.	Rupees five per gallon of the strength of London proof spirit.
3.	Medicinal and toilet preparations, not containing alcohol, but containing opium, Indian hemp, or other narcotic drug or narcotic.	Nil.

*Explanation I.*—"Gallon" means a measure of capacity which is equivalent to 160 fluid ounces.

*Explanation II.*—"London proof spirit" means that mixture of ethyl alcohol and distilled water which at the temperature of 51 degrees Fahrenheit weighs exactly 12/13th parts of an equal measure of distilled water at the same temperature.

*Explanation III.*—Where in respect of any dutiable goods the unit of assessment for the purpose of any duty under this Act is a gallon of the strength of London proof spirit, the duty shall be increased or reduced in such proportion as the strength of the dutiable goods is greater or less than that of the London proof spirit.

## [THE] MERCHANT SHIPPING ACT, 1958

(ACT XLIV of 1958)

[The Act printed here is as on 31-8-1960.]

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- 13. SHORE NUISANCES (BOMBAY AND KOLABA) ACT, XI OF 1953.

## STATEMENT OF OBJECTS AND REASONS

"Starting with the Bombay Coasting Vessels Act of 1838, a number of Acts relating to merchant shipping were passed by the Indian Legislature from time to time with the result that the law became increasingly difficult to be referred to, and the need for consolidation became very pressing. Several attempts were made to revise these laws in 1887, 1882 and again in 1893 and 1898 but all these attempts failed owing to legal and constitutional difficulties. Two of the principal contributory factors were the then limited powers of the Indian Legislature to legislate regarding shipping and the fact that part of the British Statute law on the subject, including parts of the Merchant Shipping Act, 1894, which is the principal United Kingdom enactment on the subject, applied to India and any Indian enactment had to be in legal harmony with that law. A fresh attempt was made in 1921-22 to codify the Indian law on merchant shipping by the Statute Law Revision Committee, which decided that only consolidation, and not revision, should be attempted immediately. The result was the Indian Merchant Shipping Act, 1923, which is now on the Statute Book and which consolidated some twenty-one existing Indian Acts on the subject. This Act has also been amended from time to time, the two major amendments being those made in 1933 and in 1953 so as to take power to implement the provisions of the international conventions with respect to load lines, 1930, and with respect to safety of life at sea, 1948, respectively, which have been ratified by India.

"2. By reason of Art. 372 of the Constitution, the United Kingdom Acts still continue to be in force in India, but the arrangement is unsatisfactory and the need for a comprehensive Indian law on the subject has become urgent. One of the main deficiencies in the

Indian law is that there is no provision dealing with the registration of sea-going ships except the Coasting Vessels Act, 1838, and the Indian Registration of Ships Act, 1841, under which only sailing vessels are being registered; the other ships being still registered under the United Kingdom Merchant Shipping Act, 1894 and being technically regarded as British ships. Another defect in the Indian law is that it has no extra territorial application as the British Merchant Shipping Acts apply to Indian ships outside India. To meet the immediate requirements of the country soon after independence the Merchant Shipping Laws (Extension to Acceding States and Amendment) Act, 1949 was enacted, by which the British Merchant Shipping Acts 1894 to 1938 were extended to the Acceding States (later known as Part B States and Indian consular officers were empowered to perform functions in relation to Indian ships outside India and provision was made to enable Government to prescribe the proper national colours for ships registered in India. The Control of Shipping Act, 1947, was another short-term measure which continued the war-time control over Indian shipping and controlled the coastal trade by a system of licensing. This Act, which has been renewed from time to time, is due to expire on the 31st March, 1958.

"3. The present Bill revises and consolidates all laws in force in India relating to merchant shipping, whether passed by the British Parliament or the Indian Legislature and makes provision for the matters discussed in the succeeding paragraphs,\* which also indicate the principal changes made in the law.

—Gaz. of Ind., 1958, Extra., Pt. II-Sec. 2, page 203.

These have not been reproduced here.

## [THE] MERCHANT SHIPPING ACT, 1958.

(ACT XLIV OF 1958)\*

[30th October, 1958.]

*An Act to foster the development and ensure the efficient maintenance of an Indian mercantile marine in a manner best suited to serve the national interests and for that purpose to establish a National Shipping Board and a Shipping Development Fund, to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping.*

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1958, Extra., Pt. II-Sec. 2, page 203; and for Joint Committee Report, see *ibid*, page 786/4.

## PART I\*

## PRELIMINARY

## 1. Short title and commencement.

(1) This Act may be called THE MERCHANT SHIPPING ACT, 1958.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates\* may be appointed for different provisions of this Act.

[a] Parts I and II came into force on 15-12-1958—see Gaz. of Ind., 1958, Pt. II-Sec. 3 (ii), page 2829.

Part IV came into force on 17-3-1959—~~see~~ Gaz. of Ind., 1959, Pt. II-S. 3 (ii), page 702.

For various other provisions of the Act which were brought into force on 1-4-1960,  
~~see~~ Gaz. of Ind., 1960, Pt. II-Sec. 3 (ii), page 886.

## 2. Application of Act.

(1) Unless otherwise expressly provided, the provisions of this Act which apply to ships which are registered in India or which in terms of this Act are required to be so registered shall so apply wherever the ships may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to ships other than those referred to in sub-section (1) shall so apply only while any such ship is within India, including the territorial waters<sup>a</sup> thereof.

[a] The territorial waters of India extend into the sea to a distance of six nautical miles measured from the appropriate base line—See S. R. O. 669 dated 22-3-1956 published in Gaz. of Ind., 1956, Extra., Pt. II-sec. 3, page 569.

## 3. Definitions.

In this Act, unless the context otherwise requires,—

- (1) "coasting ship" means a ship exclusively employed in trading between any port or place in India and any other port or place on the continent of India or between ports or places in India and ports or places in Ceylon or Burma;
- (2) "coasting trade of India" means the carriage by sea of passengers or goods from any port or place in India to any other port or place on the continent of India;
- (3) "collision regulations" means the regulations made under section 285 for the prevention of collisions at sea;
- (4) "company" means a company as defined in section 3 of the Companies Act, 1956;
- (5) "country to which the Load Line Convention applies" means,—
  - (a) a country the Government of which has been declared or is deemed to have been declared under section 283 to have accepted the Load Line Convention and has not been so declared to have denounced that Convention;
  - (b) a country to which it has been so declared that the Load Line Convention has been applied under the provisions of Article twenty-one thereof, not being a country to which it has been so declared that that Convention has ceased to apply under the provisions of that article;
- (6) "country to which the Safety Convention applies" means,—
  - (a) a country the Government of which has been declared under section 283 to have accepted the Safety Convention and has not been so declared to have denounced that Convention;
  - (b) a territory to which it has been so declared that the Safety Convention extends, not being a territory to which it has been so declared that that Convention has ceased to extend;
- (7) "Court" in relation to sections 178 to 183 (inclusive) means a civil or revenue Court;
- (8) "Director-General" means the Director-General of Shipping appointed under section 7;
- (9) "Distressed seaman" means a seaman engaged under this Act who, by reason of having been discharged or left behind from, or shipwrecked in, any ship at a place outside India, is in distress at that place;
- (10) "Effects", in relation to a seaman, includes clothes and documents;
- (11) "Equipment", in relation to a ship, includes boats, tackle, pumps, apparel, furniture, life saving appliances of every description, spars,



masts, rigging and sails fog signals, lights, shapes and signals of distress, medicines and medical and surgical stores and appliances, charts, radio installations, appliances for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gears and appliances of all kinds and all other stores or articles belonging to or to be used in connection with or necessary for the navigation and safety of the ship;

- (12) "fishing vessel" means a ship fitted with mechanical means of propulsion which is exclusively engaged in sea fishing for profit;
- (13) "foreign-going ship" means a ship, not being a home-trade ship, employed in trading between any port or place in India and any other port or place or between ports or places, outside India;
- (14) "free board" means—
- (a) in relation to a decked vessel, the distance above the waterline measured vertically at the side of the vessel amidships from the position of the upper edge of the uppermost complete deck; and
  - (b) in the case of any other vessel, the distance above the waterline measured vertically at the side of the vessel amidships from the upper edge of the permanent bulwark of the vessel;
- (15) "High Court", in relation to a vessel, means the High Court within the limits of whose appellate jurisdiction—
- (a) the port of registry of the vessel is situate; or
  - (b) the vessel is for the time being; or
  - (c) the cause of action wholly or in part arises;
- (16) "home-trade ship" means a ship not exceeding three thousand tons gross which is employed in trading between any port or place in India and any other port or place on the continent of India or between ports or places in India and ports or places in Ceylon Maladive Islands, Federation of Malaya, Singapore or Burma;
- (17) "Indian consular officer" means the consul-general, consul, vice-consul, consular agent and proconsul appointed as such by the Central Government, and includes any person authorised by the Central Government to perform the functions of consul-general, consul, vice-consul, consular agent or proconsul;
- (18) "Indian ship" means a ship registered as such under this Act and includes any ship registered at any port in India at the commencement of this Act which is recognized as an Indian ship under the proviso to sub-section (2) of section 22;
- (19) "load line certificate" means the certificate issued under section 316 or section 321;
- (20) "Load Line Convention" means the Convention signed in London on 5-7-1930, for promoting safety of life and property at sea, as amended from time to time;
- (21) "Marine Board" means a Board of Marine Inquiry convened under section 373.
- (22) "master" includes any person (except a pilot or harbour master) having command or charge of a ship;
- (23) "owner" means—
- (a) in relation to a ship, the person to whom the ship or a share in the ship belongs;
  - (b) in relation to a sailing vessel, the person to whom the sailing vessel belongs;

- (24) "passenger" means any person carried on board a ship except—
- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
  - (b) a person on board the ship either in pursuance of the obligations laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances which neither the master nor the charterer, if any, could have prevented or forestalled;
  - (c) a child under one year of age;
- (25) "passenger ship" means a ship carrying more than twelve passengers ;
- (26) "pilgrim" means a person making a pilgrimage and, in the case of a passenger on board a pilgrim ship, includes every person accompanying or travelling with the person making the pilgrimage;
- (27) "pilgrimage" means pilgrimage to any holy place in the Hedjaz;
- (28) "pilgrim ship" means a ship which makes a voyage to or from the Hedjaz during the season of the pilgrimage and which carries pilgrims in a proportion of not less than one pilgrim for every one hundred tons of the gross tonnage of the ship;
- (29) "port of registry", in relation to a ship or a sailing vessel, means the port at which she is registered or is to be registered;
- (30) "prescribed" means prescribed by rules made under this Act;
- (31) "proceeding" in relation to sections 178 to 183 (inclusive) includes any suit, appeal or application;
- (32) "proper officer" means the officer designated by the Central Government to be the proper officer at the port or place and in respect of the matter to which reference is made in the provision of this Act in which the expression occurs;
- (33) "proper return port", in relation to a master, seaman or apprentice discharged or left behind, means the port at which the master, seaman or apprentice was engaged, or the port agreed to as such by the master, seaman or apprentice, as the case may be;
- (34) "radio inspector" means a person appointed as such under section 10;
- (35) "registrar" means the registrar referred to in section 24;
- (36) (a) "repatriation expenses" means expenses incurred in returning a distressed seaman to a proper return port and in providing him with necessary clothing and maintenance until his arrival at such port, and includes in the case of a ship-wrecked seaman the repayment of expenses incurred in conveying him to port after shipwreck and maintaining him while being so conveyed; and
- (b) "excepted expenses", in relation to repatriation expenses, means repatriation expenses incurred in cases where the cause of the seaman being left behind is desertion or absence without leave or imprisonment for misconduct, or discharge from his ship by a Marine Board on the ground of misconduct;
- (37) "Safety Convention" means the Convention for the Safety of Life at Sea signed in London on 10-6-1948, as amended from time to time;
- (38) "safety convention certificate" means a safety certificate, a qualified safety certificate, a safety equipment certificate, a qualified safety equipment certificate, a safety radio telegraphy certificate, a safety radio telephony certificate or an exemption certificate issued under Part IX;
- (39) "sailing vessel", means any description of vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion, and includes a rowing boat or canoe but does not include a pleasure craft;

- (40) "salvage" includes all expenses properly incurred by the salvor in the performance of salvage services;
- (41) "sea-going," in relation to a vessel, means a vessel proceeding to sea beyond inland waters or beyond waters declared to be smooth or partially smooth waters by the Central Government by notification in the Official Gazette;
- (42) "seaman" means every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship under this Act, but in relation to sections 178 to 183 (inclusive) includes a master;
- (43) "seamen's employment office" means the seamen's employment office referred to in section 12;
- (44) "seamen's welfare officer" means the seamen's welfare officer referred to in section 13;
- (45) "ship" does not include a sailing vessel;
- (46) "shipping master" means the shipping master referred to in section 11; but in relation to any seaman for the purposes of sections 178 to 183 (inclusive) means a shipping master appointed,—
- (i) for the port at which the seaman entered into, or is believed to have entered into, an agreement, or
  - (ii) where the seaman did not enter into his agreement in India, for the port to which the seaman has returned, or is expected to return, on the completion of his latest voyage;
- (47) "shipping office" means the shipping office referred to in section 11;
- (48) "surveyor" means the surveyor referred to in section 9;
- (49) "tidal water" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbour;
- (50) "tindal" means the person in command or charge of a sailing vessel;
- (51) "unberthed passenger" means a passenger of the age of twelve years or upwards for whom no separate accommodation in any cabin, state room or saloon is reserved, and in the computation of passengers for any of the purposes of Part VIII, two persons of the age of one year or upwards and under the age of twelve years shall be reckoned as one unberthed passenger;
- (52) "unberthed passenger ship" means a ship carrying more than thirty unberthed passengers;
- (53) "valid international load line certificate" means a certificate purporting to have been issued in accordance with the Load Line Convention in respect of a ship, other than an Indian ship, by the Government of the country in which the ship is registered;
- (54) "valid safety convention certificate" means a certificate purporting to have been issued in accordance with the Safety Convention in respect of a ship, other than an Indian ship, by the Government of the country in which the ship is registered;
- (55) "vessel" includes any ship, boat, sailing vessel, or other description of vessel used in navigation;
- (56) "voyage" for the purposes of Part VIII, means the whole distance between the ship's port or place of departure and her final port or place of arrival;
- (57) "wages" includes emoluments;

#### Section 3 (45) — Note 1

[1] Tug vessels only touring ships within dock yard by means of a rope whenever any ship enters the port held were vessels used in

navigation and therefore came within the definition of ship. 1938 Cal 111 (112, 113) [A I R V 25]; 11 L R (1938) 1 Cal 433. ((1913) 2 K B 229, *Foll.*)

- (58) "wreck" includes the following when found in the sea or in tidal water or on the shores thereof—
- (a) goods which have been cast into the sea and then sink and remain under water;
  - (b) goods which have been cast or fall into the sea and remain floating on the surface;
  - (c) goods which are sunk in the sea, but are attached to a floating object in order that they may be found again;
  - (d) goods which are thrown away or abandoned; and
  - (e) a vessel abandoned without hope or intention of recovery;
- (59) "young person" means a person under eighteen years of age.

## PART II<sup>a</sup>

### NATIONAL SHIPPING BOARD

#### 4. Establishment of National Shipping Board.

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, there shall be established a Board to be called the National Shipping Board (hereinafter in this Part referred to as the Board).

(2) The Board shall consist of the following members, namely :

- (a) six members elected by Parliament, four by the House of the People from among its members and the other two by the Council of States from among its members;
- (b) such number of other members, not exceeding sixteen as the Central Government may think fit to appoint to the Board, to represent—
  - (i) the Central Government,
  - (ii) shipowners,
  - (iii) seamen, and
  - (iv) such other interests as, in the opinion of the Central Government, ought to be represented on the Board :

Provided that the Board shall include an equal number of persons representing the shipowners and seamen.

(3) The Central Government shall nominate one of the members of the Board to be the Chairman of the Board.

(4) The Board shall have power to regulate its own procedure.

[a] Part II came into force on 15-12-1958 — See Gaz. of Ind., 1958, Pt. II-sec. 3 (ii), page 2829.

#### 5. Functions of National Shipping Board.

The Board shall advise the Central Government—

- (a) on matters relating to Indian shipping, including the development thereof; and
- (b) on such other matters arising out of this Act as the Central Government may refer to it for advice.

#### 6. Power to make rule in respect of matters in this Part.

(1) The Central Government may make rules<sup>a</sup> to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the term of office of members of the Board and the manner of filling casual vacancies in the Board;

- (b) the appointment of officers and other employees to enable the Board to discharge its functions under S. 5 and the terms and conditions of their service :
  - (c) the travelling and other allowances payable to members of the Board.
- [a] For the National Shipping Board Rules, 1960, see G. S. R. 92 dated 18-1-1960 published in Gaz. of Ind., 1960, Pt. II-sec. 3 (i), page 155.

## PART III

### GENERAL ADMINISTRATION

#### 7. Director-General of Shipping.<sup>a</sup>

(1) The Central Government may, by notification in the Official Gazette, appoint a person to be the Director-General of Shipping for the purpose of exercising or discharging the powers, authority or duties conferred or imposed upon the Director-General by or under this Act.

(2) The Central Government may, by general or special order, direct that any power, authority or jurisdiction exercisable by it under or in relation to any such provisions of this Act as may be specified in the order shall, subject to such conditions and restrictions as may be so specified, be exercisable also by the Director-General or by such other officer as may be specified in the order.

(3) The Director-General may, by general or special order, and with the previous approval of the Central Government, direct that any power or authority conferred upon or delegated to, and any duty imposed upon, the Director-General by or under this Act may, subject to such conditions and restrictions as he may think fit to impose, be exercised or discharged also by such officer or other authority as he may specify in this behalf.

[a] Section 7 came into force on 1st April, 1960—see S. O. 585 dated 28-2-1960 published in Gaz. of Ind., 1960, Pt. II-sec. 3 (ii), page 886.

#### 8. Mercantile Marine Department.

(1) The Central Government may establish and maintain at each of the ports of Bombay, Calcutta and Madras and at such other port in India as it may consider necessary an office of the Mercantile Marine Department for the administration of this Act and the rules and regulations thereunder.

(2) The office of the Mercantile Marine Department at the port of Bombay, Calcutta or Madras shall be in the charge of a principal officer and the office at any other port shall be in the charge of such officer as the Central Government may appoint in this behalf.

(3) In the discharge of their duties, the principal officer and other officers shall be subject to the control of the Director-General.

#### 9. Surveyors.

(1) The Central Government may, by notification in the Official Gazette, appoint at such ports as it may consider necessary as many persons as it may think fit to be surveyors for the purposes of this Act.

(2) The surveyors may be nautical surveyors, ship surveyors or engineer and ship surveyors.

(3) At any port at which no surveyor appointed under this section is available, the Central Government may, by notification in the Official Gazette, appoint any qualified person to perform the functions of a surveyor under this Act.

(4) All acts done under this Act by a principal officer of the Mercantile Marine Department or a person appointed under sub-s. (3) relating to matters within the competence of a surveyor shall have the same effect as if done by a surveyor for the purposes of this Act.

**10. Radio inspectors.**

The Central Government may, by notification in the Official Gazette, appoint as many radio inspectors as it may consider necessary for the purpose of securing that the requirements of this Act and the rules and regulations thereunder relating to radio telegraphy, radio telephony and direction finders are complied with.

**11. Shipping offices.**

(1) The Central Government may, by notification in the Official Gazette, establish a shipping office at every port in India in which it thinks it necessary so to do, and shall appoint thereto a shipping master and as many deputy shipping masters and assistant shipping masters as it may consider necessary.

(2) Shipping masters, deputy shipping masters and assistant shipping masters shall exercise their powers and discharge their duties subject to the general control of the Central Government or of any intermediate authority which the Central Government may specify in this behalf.

(3) The Central Government may direct that at any port at which no separate shipping office is established, the whole or any part of the business of the shipping office shall be conducted at the custom house or at the office of the port officer or at such other office as the Central Government may specify, and thereupon the same shall be conducted accordingly.

(4) All acts done by or before a deputy shipping master, an assistant shipping master and the officer to whom any business of the shipping office is committed under sub-s. (3) shall have the same effect as if done by or before a shipping master for the purposes of this Act.

**12. Seamen's employment offices.**

(1) The Central Government may, by notification in the Official Gazette, establish at every port in India in which it thinks it necessary so to do, a seamen's employment office and shall appoint thereto a director and as many deputy directors and assistant directors as it may consider necessary.

(2) The directors, deputy directors and assistant directors shall exercise their powers and discharge their duties subject to the general control of the Central Government or of any intermediate authority which the Central Government may specify in this behalf.

(3) All acts done by or before a deputy or assistant director shall have the same effect as if done by or before a director for the purposes of this Act.

(4) The Central Government may, by notification in the Official Gazette, direct that at any port at which no separate seamen's employment office is established, the functions of the seamen's employment office in that port shall be discharged by such person or body of persons as it may specify in the notification, and thereupon the office of the person or body of persons so specified shall be deemed to be the seamen's employment office established at that port for the purposes of this Act.

**13. Seamen's welfare officers.**

(1) The Central Government may appoint seamen's welfare officers at such ports in or outside India as it may consider necessary.

(2) A seamen's welfare officer appointed under sub-s. (1) shall perform—

(a) in the case of any such officer appointed at any port in India, such functions in relation to welfare of seamen as may be assigned to him by the Central Government;

(b) in the case of any such officer appointed at any port outside India, such functions in relation to welfare of seamen and such functions of an Indian consular officer under Part VII as may be assigned to him by the Central Government.

(3) If any seamen's welfare officer appointed at any port outside India performs any functions assigned to an Indian consular officer under Part VII, such functions shall have the same effect as if they had been performed by an Indian consular officer for the purposes of that Part.

## PART IV\*

### SHIPPING DEVELOPMENT FUND

#### 14. Formation of Shipping Development Fund.

There shall be formed a fund to be called the Shipping Development Fund (hereinafter in this Part referred to as the Fund) and there shall be credited thereto—

- (a) the amount of such grants as the Central Government may make for being credited to the Fund;
- (b) the amount of any loans advanced by the Central Government to the Committee constituted under section 15 for carrying out the objects of the Fund;
- (c) such sums of money as may, from time to time, be realised out of repayment of loans made from the Fund or from interest on loans or dividends from investments made from the Fund;
- (d) such other sums as may be received for being credited to the Fund.

[a, Part IV came into force on 17-3-1959—see Gaz. of Ind., 1959, Pt. II-Sec. 3 (ii), page 702.]

#### 15. Shipping Development Fund Committee.

(1) The Central Government shall constitute a committee to be called the Shipping Development Fund Committee (hereinafter in this Part referred to as the Committee) consisting of a chairman and such number of other members, not exceeding six, as the Central Government may think fit to appoint thereto.

(2) The Committee so constituted shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property and may by that name sue and be sued.

(3) The Committee shall have power to regulate its own procedure.

#### 16. Application of the Shipping Development Fund.

(1) The Fund shall vest in the Committee and shall be applied towards meeting the expenses of the Committee and for granting loans and financial assistance in any other form to persons of the description mentioned in section 21 for acquisition and maintenance of ships.

(2) The Committee shall not grant any loan or give any financial assistance to any person referred to in sub-section (1) except on such terms and conditions as the Central Government may from time to time specify.

(3) The Committee shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as the Central Government may, in consultation with the Comptroller and Auditor-General of India, prescribe.

(4) The accounts of the Committee shall be audited by the Comptroller and Auditor-General of India or a person authorised by him in this behalf at such interval as the Comptroller and Auditor-General of India may specify and any expenditure incurred in connection with such audit shall be payable by the Committee.

(5) The Comptroller and Auditor-General of India and any person authorised by him in connection with the audit of the accounts of the Committee shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with

the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any office of the Committee.

(6) The accounts of the Committee as certified by the Comptroller and Auditor-General of India or any person authorised by him in this behalf, together with the audit report thereon, shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

### **17. Acts and proceedings of Committee not to be invalid.**

No act done or proceeding taken by the Committee shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Committee.

### **18. Dissolution of the Committee.**

The Central Government may, by notification in the Official Gazette, declare that, with effect from such date as may be specified in the notification, the Committee shall be dissolved, and thereupon all the property vested in the Committee shall vest in the Central Government.

### **19. Power to make rules in respect to matters in this Part.**

(1) The Central Government may make rules<sup>a</sup> to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the term of office of members of the Committee and the manner of filling casual vacancies in the Committee ;
- (b) powers of the Chairman of the Committee ;
- (c) the travelling and other allowances payable to members of the Committee ;
- (d) the appointment of officers and other employees of the Committee and the terms and conditions of their service ;
- (e) the custody and investment of the Fund ;
- (f) the execution of instruments and the mode of entering into contracts by or on behalf of the Committee and the proof of documents purporting to be executed, issued or signed by or on behalf of the Committee ;
- (g) any other matter which may be or is to be prescribed.

[a] For the 'Shipping Development Fund Committee (General) Rules, 1960 which have repealed the S. D. F. C. (Execution of Contracts) Rules, 1959, see G. S. R. 938 dated 8-8-1960 published in Gaz. of Ind., 1960, Pt. II—sec. 3 (i), page 1306.

## **PART V**

### **REGISTRATION OF INDIAN SHIPS**

### **20. Application of Part.**

This Part applies only to sea-going ships fitted with mechanical means of propulsion.

### **21. Indian ships.**

For the purposes of this Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each of whom either of the following descriptions applies :—

- (a) a citizen of India ; or
- (b) a company which satisfies the following requirements, namely :—
  - (i) the principal place of business of the company is in India ;



- (ii) at least seventy-five per cent. of the share capital of the company is held by citizens of India :

Provided that the Central Government may, by notification in the Official Gazette, alter such minimum percentage, and where the minimum percentage is so altered, the altered percentage shall, as from the date of the notification, be deemed to be substituted for the percentage specified in this sub-clause ;

- (iii) not less than three-fourths of the total number of directors of the company are citizens of India ;
- (iv) the chairman of the board of directors and the managing director, if any, of the company are citizens of India ;
- (v) the managing agents, if any, of the company are citizens of India or in any cases where a company is the managing agent, the company satisfies the requirements specified in sub-cl. (i), (ii), (iii) and (iv).

## **22. Obligation to register.**

(1) Every Indian ship, unless it is a ship which does not exceed fifteen tons net and is employed solely in navigation on the coasts of India shall be registered under this Act.

(2) No ship required by sub-s. (1) to be registered shall be recognised as an Indian ship unless she has been registered under this Act :

Provided that any ship registered at the commencement of this Act at any port in India under any enactment repealed by this Act, shall be deemed to have been registered under this Act and shall be recognised as an Indian ship.

(3) A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces a certificate of registry in respect of the ship.

### *Procedure for registration.*

## **23. Ports of registry.**

(1) The ports at which registration of ships shall be made shall be the ports of Bombay, Calcutta and Madras and such other ports in India as the Central Government may, by notification in the Official Gazette, declare to be ports of registry under this Act.

(2) The port at which an Indian ship is registered for the time being under this Act shall be deemed to be her port of registry and the port to which she belongs.

## **24. Registrars of Indian ships.**

At each of the ports of Bombay, Calcutta and Madras, the principal officer of the Mercantile Marine Department, and at any other port such authority as the Central Government may, by notification in the Official Gazette, appoint, shall be the registrar of Indian ships at that port.

## **25. Register book.**

Every registrar shall keep a book to be called the register book and entries in that book shall be made in accordance with the following provisions :—

- (a) the property in a ship shall be divided into ten shares ;
- (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than ten individuals shall be entitled to be registered at the same time as owners of any one ship ; but this rule shall not affect the beneficial interest of any number of persons represented by or claiming under or through any registered owner or joint owner ;
- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship ; but any number of persons not exceeding five

may be registered as joint owners of a ship or of any share or shares therein ;

- (d) joint owners shall be considered as constituting one person and shall not be entitled to dispose in severalty of any interest in a ship or any share therein in respect of which they are registered ;
- (e) a company may be registered as owner by its name.

## **26. Application for registry.**

An application for the registry of an Indian ship shall be made—

- (a) in the case of an individual, by the person requiring to be registered as owner or by his agent;
  - (b) in the case of more than one individual requiring to be so registered, by some one or more of the persons so requiring or by his or their agent; and
  - (c) in the case of a company requiring to be so registered, by its agent;
- and the authority of the agent shall be testified by writing, if appointed by an individual, under the hand of the person appointing him and, if appointed by a company, under its common seal.

## **27. Survey and measurement of ships before registry.**

(1) The owner of every Indian ship in respect of which an application for registry is made shall cause such ship to be surveyed by a surveyor and the tonnage of the ship ascertained in the prescribed manner.

(2) The surveyor shall grant a certificate specifying the ship's tonnage and build and such other particulars descriptive of the identity of the ship as may be prescribed and the certificate of the surveyor shall be delivered to the registrar before registry.

## **28. Marking of ship.**

(1) The owner of an Indian ship who applies for registry under this Act shall, before registry, cause her to be marked permanently and conspicuously in the prescribed manner and to the satisfaction of the registrar and any ship not so marked may be detained by the registrar.

(2) Subject to any other provision contained in this Act and to the provisions of any rules made thereunder, the owner and the master of an Indian ship shall take all reasonable steps to ensure that the ship remains marked as required by this section, and the said owner or master shall not cause or permit any alterations of such marks to be made except in the event of any of the particulars thereby denoted being altered in the manner provided in this Act or except to evade capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

## **29. Declaration of ownership on registry.**

A person shall not be registered as the owner of an Indian ship or of a share therein until he or, in the case of a company, the person authorised by this Act to make declarations on its behalf has made and signed a declaration of ownership in the prescribed form referring to the ship as described in the certificate of the surveyor and containing the following particulars:—

- (a) a statement whether he is or is not a citizen of India; or in the case of a company, whether the company satisfies the requirements specified in cl. (b) of section 21 ;
- (b) a statement of the time when and the place where the ship was built or if the ship is built outside India and the time and place of building is not known, a statement to that effect; and in addition, in the case of a ship previously registered outside India, a statement of the name by which she was so registered;
- (c) the name of her master;

- (d) the number of shares in the ship in respect of which he or the company, as the case may be, claims to be registered as owner; and
- (e) a declaration that the particulars stated are true to the best of his knowledge and belief.

*Explanation.*—In respect of a ship or share owned by more than one person, a declaration may be made by such one of them as may be authorised by them.

### **30. Evidence on first registry.**

On the first registry of an Indian ship, the following evidence shall be produced in addition to the declaration of ownership:—

- (a) in the case of a ship built in India, a builder's certificate, that is to say, a certificate signed by the builder of the ship and containing a true account of the proper denomination and the tonnage of the ship as estimated by him and the time when and the place where she was built, and the name of the person, if any on whose account the ship was built; and if there has been any sale, the instrument of sale under which the ship or the share therein has become vested in the applicant for registry;
- (b) in the case of a ship built outside India, the same evidence as in the case of a ship built in India unless the declarant who makes the declaration of ownership declares that the time and place of her building are not known to him, or that the builder's certificate cannot be procured, in which case there shall be required only the instrument of sale under which the ship or a share therein has become vested in the applicant for registry.

### **31. Entry of particulars in register book.**

As soon as the requirements of this Act preliminary to registry have been complied with, the registrar shall enter in the register book the following particulars in respect of the ship:—

- (a) the name of the ship and the name of the port to which she belongs;
- (b) the details contained in the surveyor's certificate;
- (c) the particulars respecting her origin stated in the declaration of ownership; and
- (d) the name and description of her registered owner or owners, and, if there are more owners than one, the number of shares owned by each of them.

### **32. Documents to be retained by registrar.**

On the registry of a ship, the registrar shall retain in his custody the following documents:—

- (a) the surveyor's certificate;
- (b) the builder's certificate;
- (c) any instrument of sale by which the ship was previously sold;
- (d) all declarations of ownership.

### **33. Power of Central Government to inquire into title of Indian ship to be so registered.**

(1) Where it appears to the Central Government that there is any doubt as to the title of any Indian ship to be registered as an Indian ship, it may direct the registrar of her port of registry to require evidence to be given to his satisfaction within such time, not being less than thirty days as the Central Government may fix, that the ship is entitled to be registered as an Indian ship.

(2) If within such time as may be fixed by the Central Government under sub-section (1) evidence to the satisfaction of the registrar that the ship is entitled to be registered as an Indian ship is not given, the ship shall be liable to forfeiture.

*Certificate of registry.***34. Grant of certificate of registry.**

On completion of the registry of an Indian ship, the registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book with the name of her master.

**35. Custody and use of certificate.**

(1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatever, had or claimed by any owner, mortgagee or other person to, on or in the ship.

(2) No person, whether interested in the ship or not, who has in his possession or under his control the certificate of registry of a ship, shall refuse or omit without reasonable cause to deliver such certificate on demand to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship or to any registrar, customs collector or other person entitled by law to require such delivery.

(3) Any person refusing or omitting to deliver the certificate as required by sub-section (2), may, by order, be summoned by any magistrate of the first class to appear before him and to be examined touching such refusal; and if the person is proved to have absconded so that the order of such magistrate cannot be served on him, or if he persists in not delivering up the certificate, the magistrate shall certify the fact, and the same proceedings may then be taken as in the case of a certificate mislaid, lost or destroyed, or as near thereto as circumstances permit.

(4) If the master or owner of an Indian ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he shall be guilty of an offence under this sub-section and the ship shall be liable to forfeiture.

**36. Power to grant new certificate when original certificate is defaced, lost, etc.**

(1) In the event of the certificate of registry of an Indian ship being defaced or mutilated, the registrar of her port of registry may, on the delivery to him of that certificate, grant a new certificate in lieu of her original certificate.

(2) In the event of the certificate of registry of an Indian ship being mislaid, lost or destroyed or of the person entitled thereto being unable to obtain it from the custody of any other person, the registrar of her port of registry shall grant a new certificate in lieu of her original certificate.

(3) If the port at which the ship is at the time of the event referred to in sub-s. (2) or first arrives after the event is outside India, then the master of the ship or some other person having knowledge of the facts of the case shall make a declaration stating such facts and the names and descriptions of the registered owners of such ship to the best of the declarant's knowledge and belief to the nearest available Indian consular officer who may thereupon grant a provisional certificate containing a statement of the circumstances under which it is granted.

(4) The provisional certificate shall, within ten days after the first subsequent arrival of the ship at her port of discharge in India, be delivered by the master to the registrar of her port of registry and the registrar shall thereupon grant a new certificate of registry.

(5) If the certificate of registry stated to have been mislaid, lost or destroyed shall at any time afterwards be found, or if the person entitled to the certificate of registry obtains it at any time afterwards, the said certificate shall forthwith be delivered to the registrar of her port of registry to be cancelled.

**37. Endorsement on certificate of change of master.**

Where the master of an Indian ship is changed, each of the following persons, that is to say,—

- (a) if the change is made in consequence of the removal of the master by a Marine Board or by a Court under this Act, the presiding officer of the Marine Board or of the Court, as the case may be;
- (b) if the change occurs from any other cause,—
  - (i) In India, the registrar or any other officer authorised by the Central Government in this behalf at the port where the change occurs; and
  - (ii) outside India, the Indian consular officer at the port where the change occurs ;

shall endorse and sign on the certificate of registry a memorandum of the change; and any customs collector at any port in India may refuse to permit any person to do any act there as master of an Indian ship unless his name is inserted in or endorsed on her certificate of registry as her last appointed master.

**38. Endorsement on certificate of change of ownership.**

(1) Whenever a change occurs in the registered ownership of an Indian ship, the change of ownership shall be endorsed on her certificate of registry either by the registrar of the ship's port of registry or by the registrar of any port at which the ship arrives who has been advised of the change by the registrar of the ship's port of registry.

(2) The master shall, for the purposes of such endorsement by the registrar of the ship's port of registry, deliver the certificate of registry to the registrar, forthwith after the change if the change occurs when the ship is at her port of registry, and if it occurs during her absence from that port and the endorsement under this section is not made before her return, then, upon her first return to that port.

(3) The registrar of any port, not being the ship's port of registry, who is required to make an endorsement under this section may, for that purpose, require the master of the ship to deliver to him the ship's certificate of registry so that the ship need not thereby be detained and the master shall deliver the same accordingly.

**39. Delivery of certificate of ship lost or ceasing to be an Indian ship.**

(1) In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt or broken up or ceasing for any reason to be an Indian ship, every owner of the ship or any share in the ship shall immediately on obtaining knowledge of the event, if no notice thereof has already been given to the registrar, give notice thereof to the registrar at her port of registry and that registrar shall make an entry thereof in the register book and its registry in that book shall be considered as closed except so far as relates to any unsatisfied mortgages entered therein.

(2) In any such case, except where the ship's certificate of registry is mislaid, lost or destroyed, the master of the ship shall, immediately if the event occurs in any port in India, or within ten days after his arrival in port if it occurs elsewhere, deliver the certificate to the registrar of the port or any other officer specified in this behalf by the Central Government if the port of arrival is in India, or if the arrival is in any port outside India to the Indian consular officer there, and the registrar if he is not himself the registrar of her port of registry or the officer so specified or the Indian consular officer, as the case may be, shall forthwith forward the certificate delivered to him to the registrar of her port of registry.

**40. Provisional certificate for ships becoming Indian ships abroad.**

(1) If at any port outside India a ship becomes entitled to be registered as an Indian ship, the Indian consular officer there may grant to her master on his application a provisional certificate containing such particulars as may be prescribed in relation to the ship and shall forward a copy of the certificate at the first convenient opportunity to the Director-General.

(2) Such a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect.

**41. Temporary pass in lieu of certificate of registry.**

Where it appears to the Central Government that by reason of special circumstances it is desirable that permission should be granted to any Indian ship to pass without being previously registered from one port to any other port in India, the Central Government may authorise the registrar of the first-mentioned port to grant a pass in such form as may be prescribed, and that pass shall for the time and within the limits therein mentioned have the same effect as a certificate of registry.

*Transfers of ships, shares, etc.***42. Transfer of ships, or shares.**

(1) No person shall transfer or acquire any Indian ship or any share or interest therein without the previous approval of the Central Government and any transaction effected in contravention of this provision shall be void and unenforceable.

(2) The Central Government may, if it considers it necessary or expedient so to do for the purpose of conserving the tonnage of Indian shipping, refuse to give its approval to any such transfer or acquisition.

(3) Subject to the other provisions contained in this section, an Indian ship or a share therein shall be transferred only by an instrument in writing.

(4) The instrument shall contain such description of the ship as is contained in the surveyor's certificate or some other description sufficient to identify the ship to the satisfaction of the registrar and shall be in the prescribed form or as near thereto as circumstances permit and shall be executed by the transferor in the presence of and be attested by at least two witnesses.

**43. Registry of transfer.**

(1) Every instrument for the transfer of an Indian ship or of a share therein when duly executed shall be produced to the registrar of her port of registry, and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share, as the case may be, and shall endorse on the instrument the fact of that entry having been made with the day and hour thereof.

(2) Every such instrument shall be entered in the register book in the order of its production to the registrar.

**44. Transmission of property in Indian ship on death, insolvency, etc.**

(1) Where the property in an Indian ship or share therein is transmitted to a person on the death or insolvency of any registered owner, or by any lawful means other than by a transfer under this Act,—

(a) that person shall authenticate the transmission by making and signing a declaration in the prescribed form (in this Act referred to as a declaration of transmission) identifying the ship and also a statement of the manner in which and the person to whom the property has been transmitted;

- (b) if the transmission is consequent on insolvency, the declaration of transmission shall be accompanied by proper proof of such claim;
- (c) if the transmission is consequent on death, the declaration of transmission shall be accompanied by a succession certificate, probate or letters of administration under the Indian Succession Act, 1925, or a duly certified copy thereof.

(2) The registrar, on receipt of the declaration of transmission so accompanied, shall enter in the register book the name of the person entitled under the transmission as owner of the ship or share the property in which has been transmitted, and, where there are more persons than one, shall enter the names of all those persons, but those persons however numerous shall, for the purpose of the provisions of this Act with respect to the number of persons claiming to be registered as owners, be considered as one person :

Provided that nothing in this sub-section shall require the registrar to make an entry in the register book under this section, if he is of opinion that by reason of the transmission the ship has ceased to be an Indian ship.

#### **45. Order for sale where ship has ceased to be an Indian ship.**

(1) Where by reason of the transmission of any property in a ship or a share therein on death, insolvency or otherwise, a ship ceases to be an Indian ship, the registrar of her port of registry shall submit a report to the Central Government setting out the circumstances in which the ship has ceased to be an Indian ship.

(2) On receipt of such report, the Central Government may make an application to the High Court for a direction for the sale to any citizen of India or any company which satisfies the requirements specified in cl. (b) of S. 21 of the property so transmitted.

(3) The High Court may require any evidence in support of the application it thinks requisite and may make such order thereon and on such terms and conditions as it thinks just or may reject the application "[in case] it finds that the ship has not ceased to be an Indian ship; and in case the ship or the share is ordered to be sold, it shall direct that the proceeds of the sale after deducting the expenses thereof, be paid to the person entitled under such transmission or otherwise.

(4) Every application for sale shall be made within such time as may be prescribed :

Provided that an application may be admitted by the High Court after the time prescribed, if the Central Government satisfies the High Court that it had sufficient cause for not making the application within such time.

<sup>a</sup> Substituted for the words "in any case" by the Repealing and Amending Act, 1960 (LXIII of 1960), S. 3 & Sch. II [26-12-1960].

#### **46. Transfer of ship on sale by order of court.**

Where any Court, whether under S. 45 or otherwise, orders the sale of any ship or share therein, the order of the Court shall contain a declaration vesting in some person named by the Court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof; and every registrar shall obey the requisition of the person so named in respect of any such transfer to the same extent as if such person were the registered owner.

#### **47. Mortgage of ship or share.**

(1) A registered ship or a share therein may be made a security for a loan or other valuable consideration, and the instrument creating the security (in this Act called a mortgage) shall be in the prescribed form or as near thereto as

circumstances permit, and on the production of such instrument the registrar of the ship's port of registry shall record it in the register book.

(2) Mortgages shall be recorded by the registrar in the order in time in which they are produced to him for that purpose, and the registrar shall, by memorandum under his hand, notify on each mortgage that it has been recorded by him stating the day and hour of that record.

#### **48. Entry of discharge of mortgage.**

Where a registered mortgage is discharged, the registrar shall, on the production of the mortgage deed with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged, and on that entry being made the estate, if any, which passed to the mortgagee shall vest in the person in whom (having regard to intervening acts and circumstances, if any) it would have vested, if the mortgage had not been made.

#### **49. Priority of mortgages.**

If there are more mortgages than one recorded in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is recorded in the register book and not according to the date of each mortgage itself.

#### **50. Mortgagee not deemed to be owner.**

Except in so far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not, by reason of his mortgage, be deemed to be the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

#### **51. Rights of mortgagee.**

(1) A registered mortgagee of a ship or share shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.

(2) Subject to the provisions of sub-s. (1), no such mortgagee shall merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share.

#### **52. Mortgage not affected by insolvency.**

A registered mortgage of a ship or share shall not be affected by any act of insolvency committed by the mortgagor after the date of the record of such mortgage, notwithstanding that the mortgagor, at the commencement of his insolvency, had the ship or share in his possession, order or disposition, or was the reputed owner thereof, and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the insolvent or any trustee or assignee on their behalf.

#### **53. Transfer of mortgages.**

(1) A registered mortgage of a ship or share may be transferred to any person and the instrument effecting the transfer shall be in the prescribed form or as near thereto as circumstances permit, and on the production of such instrument, the registrar shall record it by entering in the register book the name of the transferee as mortgagee of the ship or share and shall, by memorandum under his hand, notify on the instrument of transfer that it has been recorded by him stating the day & hour of the record.

(2) The person to whom any such mortgage has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.



**54. Transmission of interest in mortgage in certain circumstances.**

(1) Where the interest of a mortgagee in a ship or share is transmitted on death, or insolvency, or by any lawful means other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of a ship or share.

(2) The registrar, on receipt of the declaration and the production of the evidence aforesaid, shall enter the name of the person entitled under the transmission in the register book as mortgagee of the ship or share.

*Name of ship.***55. Rules as to name of ship.**

(1) An Indian ship shall not be described by any name other than that by which she is for the time being registered.

(2) The registrar may refuse the registry of any Indian ship by the name by which it is proposed to register the ship if that name is already borne by another ship or if the name be so similar as is calculated or likely to deceive.

(3) A change shall not be made in the name of an Indian ship except in the prescribed manner.

(4) If any person acts or suffers any person under his control to act in contravention of this section or omits to do or suffers any person under his control to omit to do anything required under this [section] the ship may be detained until the provisions of this section are complied with :

Provided that nothing in this sub-section shall apply to a foreign ship which has become, and is sought to be registered as, an Indian ship.

[a] Substituted for "sub-section" by the Repealing and Amending Act, 1960 (LVIII of 1960), S. 3 & Sch. II [26-12-1960].

*Registry of alterations, registry anew and transfer of registry.***56. Registry of alterations.**

When a registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if the alteration is made at any port having a registrar, that registrar, or if it is made elsewhere, the registrar of the first port having a registrar at which the ship arrives after the alteration, shall, on application being made to him stating the particulars of the alteration, either cause the alteration to be registered or direct that the ship be registered anew.

**57. Regulations for registry of alterations.**

(1) For the purpose of registry of an alteration in a ship the ship's certificate of registry shall be produced to the registrar, and the registrar shall, in his discretion, either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered or endorse and sign on the existing certificate a memorandum of the alteration.

(2) The particulars of the alteration so made, and the fact of the new certificate having been granted, or endorsement having been made, shall be entered by the registrar of the ship's port of registry in his register books ; and for that purpose the registrar to whom the application for the registry of the alteration has been made (if he is not the registrar of the ship's port of registry) shall forthwith report to the last-mentioned registrar the particulars and facts as aforesaid, accompanied, where a new certificate of registry has been granted, by the old certificate of registry.

**58. Provisional certificate and endorsement where ship is to be registered anew.**

(1) Where any registrar, not being the registrar of the ship's port of registry, on an application as to an alteration in a ship directs the ship to be registered anew, he shall either grant a provisional certificate describing the ship as altered, or provisionally endorse the particulars of the alteration on the existing certificate.

(2) Every such provisional certificate, or certificate provisionally endorsed, shall, within ten days after the first subsequent arrival of the ship at her port of discharge in India, be delivered to the registrar thereof and that registrar shall cause the ship to be registered anew.

(3) The registrar granting a provisional certificate, or provisionally endorsing a certificate under this section shall add to the certificate or endorsement a statement that the same is made provisionally, and shall send a report of the particulars of the case to the registrar of the ship's port of registry, containing a similar statement as the certificate or endorsement.

**59. Registry anew on change of ownership.**

Subject to the other provisions contained in this Act, where the ownership of any Indian ship is changed, the registrar of the port at which the ship is registered may, on the application of the owner of the ship, register the ship anew although registry anew is not required under this Act.

**60. Procedure for registry anew.**

(1) Where a ship is to be registered anew, the registrar shall proceed as in the case of first registry, and on the delivery to him of the existing certificate of registry and on the other requisites to registry, or in the case of a change of ownership such of them as he thinks material, being duly complied with, shall make such registry anew, and grant a certificate thereof.

(2) When a ship is registered anew, her former registry shall be considered as closed except so far as relates to any unsatisfied mortgage entered thereon, but the names of all persons appearing on the former register to be interested in the ship as owners or mortgagees shall be entered in the new register and the registry anew shall not in any way affect the rights of any of those persons.

**61. Transfer of registry.**

(1) The registry of any ship may, with the previous approval of the Director-General, be transferred from one port of registry to another on the application to the registrar of the existing port of registry of the ship made by declaration in writing of all persons appearing in the register to be interested therein as owners or mortgagees, but that transfer shall not in any way affect the rights of those persons or any of them and those rights shall in all respects continue in the same manner as if no such transfer had been effected.

(2) On receipt of any such application the registrar shall transmit notice thereof to the registrar of the intended port of registry with a copy of all particulars relating to the ship and the names of all persons appearing in that register to be interested therein as owners or mortgagees.

(3) The ship's certificate of registry shall be delivered to the registrar either of the existing or intended port of registry, and, if delivered to the former, shall be transmitted to the registrar of the intended port of registry.

(4) On receipt of the documents aforesaid the registrar of the intended port of registry shall enter in his register book all the particulars and names so transmitted as aforesaid, and grant a fresh certificate of registry, and thenceforth such ship shall be considered to be registered at the new port of registry, and the name of the ship's new port of registry shall be substituted for the name of her former port of registry on the ship.

**Restrictions on re-registry of abandoned ships.**

Where a ship has ceased to be registered as an Indian ship by reason of having been wrecked or abandoned, or for any reason other than capture by the enemy, the ship shall not be re-registered until she has at the expense of the applicant for the registry been surveyed by a surveyor and certified by him to be seaworthy.

*National character and flag.***63. National colours for Indian ships.**

(1) The Central Government may, by notification in the Official Gazette, declare what shall be the proper national colours for all ships registered under this Act and for all ships which are not so registered but which are owned by the Government or by any local authority or by any body corporate established by or under any law for the time being in force in India or by a citizen of India; and different colours may be declared for different classes of ships.

(2) Any commissioned officer of the Indian Navy, or any customs collector or any Indian consular officer, may board any ship on which any colours are hoisted contrary to this Act and seize and take away the colours which shall be forfeited to the Government.

**64. Unlawful assumption of Indian character.**

No person on board a ship which is not an Indian ship shall for the purpose of making it appear to be an Indian ship, use the Indian national colours, unless the assumption of Indian character has been made (the burden of proving which shall lie on him) for the purpose of escaping capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

**65. Concealment of Indian, or assumption of foreign, character.**

No owner or master of an Indian ship shall knowingly do anything or permit anything to be done, or carry or permit to be carried any papers or documents, with intent to conceal the Indian character of the ship from any person entitled by any law for the time being in force to inquire into the same, or with intent to assume a foreign character for the ship, or with intent to deceive any person so entitled as aforesaid.

**66. Indian ships to hoist proper national colours in certain cases.**

An Indian ship shall hoist the proper national colours—

- (a) on a signal being made to her by any vessel of the Indian Navy;
- (b) on entering or leaving any foreign port;
- (c) if of fifty tons gross tonnage or more, on entering or leaving any Indian port.

**67. National character of ship to be declared before clearance.**

(1) A customs collector shall not grant a clearance for any ship until the master of such ship has declared to that officer the name of the country to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance.

(2) If a ship attempts to proceed to sea without such clearance, she may be detained by any customs collector until the declaration is made.

*Miscellaneous***68. Liabilities of ships not recognised as Indian ships.**

Where it is declared by this Act that an Indian ship shall not be recognised as such, that ship shall not be entitled to any privileges, benefits, advantages or protection usually enjoyed by Indian ships or to use the Indian national colours for Indian ships or to assume the Indian national character, but so far as regards the payment of dues, the liability to fine and forfeiture and the punishment of offences committed on board such ship, or by any person belonging to her, such

ship shall be dealt with in the same manner in all respects as if she were a recognised Indian ship.

### **69. Proceedings on forfeiture of ship.**

Where any ship has either wholly or as to any share therein become subject to forfeiture under this Part, any commissioned officer of the Indian Navy, any customs collector or any Indian consular officer or any other officer authorised by the Central Government, may seize and detain the ship and bring her for adjudication before the High Court, and the High Court may thereupon adjudge the ship with her equipment to be forfeited to the Government, and make such order in the case as to the High Court seems just and may award to the officer bringing in the ship for adjudication such portion of the proceeds of the sale of the ship or any share therein as the High Court thinks fit.

### **70. Notice of trust not received.**

No notice of any trust, express, implied or constructive, shall be entered in the register book or be receivable by the registrar, and subject to any rights and powers appearing by the register book to be vested in any other person, the registered owner of a ship or of a share therein shall have power to dispose of the ship or share in the manner provided in this Act and to give effectual receipts for any money paid or advanced by way of consideration.

### **71. Liability of owners.**

Where any person is beneficially interested otherwise than by way of mortgage in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all the pecuniary penalties imposed by this or any other Act on the owners of ships or shares therein, so nevertheless that proceedings for the enforcement of any such penalties may be taken against both or either of the said parties with or without joining the other of them.

### **72. Evidence of register book, certificate of registry and other documents.**

(1) On application to the registrar and on payment of the prescribed fee, a person may, at any time during office hours, inspect any register book, and may obtain a certified copy of any entry in the register book.

(2) The following documents shall be admissible in evidence in any Court in manner provided by this Act, namely :—

- (a) any register book on its production from the custody of the registrar or other person having the lawful custody thereof;
- (b) a certificate of registry under this Act purporting to be signed by the registrar or any other officer authorised in this behalf by the Central Government;
- (c) an endorsement on a certificate of registry purporting to be signed by the registrar or any other officer authorised in this behalf by the Central Government;
- (d) every declaration made in pursuance of this Part in respect of an Indian ship.

(3) A certified copy of an entry in a register book shall be admissible in evidence in any Court and have the same effect to all intents as the original entry in the register book of which it is a copy.

### **73. Power to register Government ships under this Part.**

The Central Government may, by notification in the Official Gazette, direct that, subject to such rules as may be made in this behalf, ships belonging to the Government other than ships of the Indian Navy may be registered as Indian ships under this Act and thereupon this Act, subject to any exceptions and modifications which may be made in the notification either generally or with

respect to any class of ships belonging to Government, shall apply to ships belonging to Government registered in accordance with those rules as they apply to Indian ships registered in manner provided by this Act.

#### **74. Power to make rules in respect of matters in this Part.**

(1) The Central Government may make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the manner in which the tonnage of any ship shall be ascertained, whether for the purpose of registration or otherwise, including the mode of measurement;
- (b) the recognition for the purpose of ascertaining the tonnage of any ship or for any other purpose, of any tonnage certificate granted in respect of any ship in any country outside India, the tonnage regulations of which are substantially the same as the tonnage rules made by the Central Government, including the conditions and restrictions subject to which such recognition may be granted;
- (c) the manner in which surveys of ships shall be conducted and the form of certificates of surveying officers;
- (d) the manner in which ships shall be marked;
- (e) the form in which any document required by this Part shall be prepared and the particulars which it should contain;
- (f) the persons by whom and the authorities before which any declaration required by this Part shall be made and the circumstances in which any such declaration may be waived and other evidence accepted;
- (g) the form of the instrument creating a mortgage on a ship or share or transferring a mortgage;
- (h) the returns that shall be made by registrars to the Director-General or to such other authority as the Central Government may appoint and the form in which and the intervals within which such returns shall be made;
- (i) the procedure for the registration, marking or alteration of the names of Indian ships;
- (j) the fees that may be levied under this Part and the manner in which such fees shall be collected;
- (k) the manner in which registrars and other authorities may exercise their powers under this Part or maintain their books and other registers;
- (l) the manner in which ships belonging to the Government, to which the provisions of this Act may be made applicable under section 73, may be registered;
- (m) any other matter which may be or is to be prescribed.

### **PART VI**

#### **CERTIFICATES OF OFFICERS**

*Masters, mates and engineers.*

#### **75. Application of Part.**

This Part applies only to sea-going ships fitted with mechanical means of propulsion.

#### **76. Certificates of competency to be held by officers of ships.**

(1) Every foreign-going Indian ship, every home-trade Indian ship of two hundred tons gross or more when going to sea from any port or place in India and every ship carrying passengers between ports or places in India shall be

provided with officers duly certificated under this Act according to the following scale, namely :

- (a) in every case, with a duly certificated master ;
- (b) if the ship is a foreign-going ship or a home-trade passenger ship of one hundred and fifty tons gross or more, with at least one officer besides the master holding a certificate not lower than that of first mate in the case of a foreign-going ship and of mate in the case of a home-trade passenger ship ;
- (c) if the ship is a home-trade ship, not being a passenger ship, of four hundred and fifty tons gross or more, with at least one officer besides the master holding a certificate not lower than that of mate ;
- (d) if the ship is a foreign-going ship and carries more than one mate, then with the second mate duly certificated.

(2) Every foreign-going Indian ship when going to sea from any port or place in India shall be provided with engineers duly certificated under this Act according to the following scale, namely :

- (a) if the ship is of one hundred nominal horse-power or more, with at least two engineers one of whom shall be a first class engineer designated as the chief engineer, and the other a first class or second class engineer designated as the second engineer ;
- (b) if the ship is of less than one hundred nominal horse-power, with at least one first class or second class engineer designated as the chief engineer.

(3) Every home-trade Indian ship when going to sea from any port or place in India and every ship carrying passengers between ports or places in India shall be provided with engineers or engine drivers duly certificated according to the following scale, namely :

- (a) if the ship is of fifty nominal horse-power or more, with at least one first class or second class engineer designated as the chief engineer ;
- (b) if the ship is of less than fifty nominal horse-power, with at least one first class or second class engineer designated as the chief engineer, or with at least one engine driver of a sea-going ship.

(4) Every fishing vessel when going to sea from any port or place in India shall be provided—

- (a) if the vessel exceeds twenty-five tons gross but does not exceed fifty tons gross, with a certificated skipper ;
- (b) if the vessel exceeds fifty tons gross, with a certificated skipper and a certificated second hand ;
- (c) if the vessel is of fifty nominal horse-power or more, with at least one engineer duly certificated, being an engineer of a fishing vessel, who shall be designated as the chief engineer ;
- (d) if the vessel is of less than fifty nominal horse-power with at least one engineer duly certificated, being an engineer of a fishing vessel, who shall be designated as the chief engineer or with at least one engine driver of a fishing vessel duly certificated.

*Explanation.* — For the purposes of clause (c), persons holding certificates of competency as first class or second class engineers shall be deemed to be duly certificated and for the purposes of clause (d), persons holding certificates of competency as engine drivers of sea-going ships shall be deemed to be duly certificated

(5) Nothing in this section which relates to engineers or engine drivers shall apply to any ship to which the provisions of the Inland Steam-Vessels Act, 1917, apply.

*Explanation.* — In this section “nominal horse-power in relation to any ship means the horse-power of the engines of the ship calculated in the prescribed manner.

### **77. When officers deemed duly certificated.**

Subject to the provisions contained in section 86, an officer shall not be deemed to be duly certificated under this Act unless he holds a certificate of a grade appropriate to his station in the ship or of a higher grade granted in accordance with this Act.

### **78. Grades of certificates of competency.**

(1) Certificates of competency shall be granted in accordance with this Act for each of the following grades, namely :

- master of a foreign-going ship ;
- first mate of a foreign-going ship ;
- second mate of a foreign-going ship ;
- master of a home-trade ship ;
- mate of a home-trade ship ;
- first class engineer ;
- second class engineer ;
- engine driver of a sea-going ship ;
- skipper of a fishing vessel ;
- second hand of a fishing vessel ;
- engineer of a fishing vessel ;
- engine driver of a fishing vessel.

(2) A certificate of competency granted for the grade of first or second class engineer or engine driver shall state whether it entitles the holder to act as engineer or engine driver of ships fitted with steam engines or of ships fitted with any other type of engines and the holder shall not be entitled to act as engineer or engine driver of a ship fitted with a type of engine not stated in the certificate.

(3) If it appears to the Central Government that certificates of competency for grades other than those referred to in sub-section (1) may be granted, it may, by notification in the official Gazette, specify the other grades in respect of which certificates of competency may be granted.

(4) A certificate of competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate for a home-trade ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship ; but no certificate for a home-trade ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

### **79. Examinations for, and grant of, certificates.**

(1) The Central Government or a person duly authorised by it in this behalf shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency under section 78.

(2) The Central Government or such authorised person shall grant to every applicant, who is duly reported by the examiners to have passed the examination satisfactorily and to have given satisfactory evidence of his sobriety, experience and ability and general good conduct on board ship, such a certificate of competency as the case requires :

Provided that the Central Government may, in any case in which it has reason to believe that the report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character.

**80. Certificates of service of naval officers.**

(1) A person who has attained the rank of lieutenant in the executive branch of the Indian Navy shall be entitled to a certificate of service as the master of a foreign-going ship without examination.

(2) A person who has attained the rank of lieutenant or sub-lieutenant in the engineering branch of the Indian Navy shall be entitled without examination, if a lieutenant to a certificate of service as first class engineer, and if a sub-lieutenant to a certificate of service as second class engineer.

(3) The Central Government may, by rules made under this Act and subject to such conditions and restrictions as may be specified therein, provide for the grant of certificates of service to officers of the Indian Naval Reserve Forces who have attained the prescribed ranks.

(4) A certificate of service shall differ in form from a certificate of competency and shall contain the name and rank of the person to whom it is delivered, and the Central Government shall deliver a certificate of service to any person who proves himself to be entitled thereto.

(5) Notwithstanding anything contained in this section, the Central Government may, if it is of opinion that a person who is entitled to a certificate of service under this section is not a fit person to hold such certificate, refuse to grant or deliver such certificate to him.

(6) The provisions of this Act (including the provisions relating to penalties) shall apply in relation to a certificate of service as they apply in relation to a certificate of competency.

**81. Form of certificates.**

Every certificate of competency granted under this Act shall be in the prescribed form and shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

**82. Record of orders affecting certificates.**

A note of all orders made for cancelling, suspending, altering or otherwise affecting any certificate of competency, in pursuance of the powers contained in this Act, shall be entered on the copy of the certificate kept under section 81.

**83. Loss of certificates.**

Whenever a person holding a certificate granted under this Act proves to the satisfaction of the Central Government that he has, without fault on his part, lost or been deprived of such certificate, the Central Government shall, on payment of the prescribed fee, cause a copy of the certificate, to which by the record kept in accordance with this Act he appears to be entitled, to be granted to him, and such copy shall have all the effect of the original.

**84. Production of certificates of competency to shipping master.**

(1) The master of a foreign-going ship or the master of a home-trade ship of two hundred tons gross or more—

(a) on signing the agreement with his crew, shall produce to the shipping master before whom the same is signed, the certificates of competency which the master, mate, engineers and engine drivers of the ship are by this Act required to hold; and

(b) in the case of a running agreement, shall, also, before the second and every subsequent voyage, produce to the shipping master the certificate of competency of any mate or engineer then first engaged by him who is required by this Act to hold a certificate.



(2) Upon the production of the certificates of competency, the shipping master shall, if the certificates are such as the master, mates and engineers of the ship ought to hold, give to the master a certificate to the effect that the proper certificates of competency have been so produced.

(3) The master shall, before proceeding to sea, produce the certificate given to him by the shipping master to the customs collector.

(4) No customs collector shall clear any such ship outwards without the production of such certificate; and, if any ship attempts to go to sea without a clearance, the customs collector may detain her until the certificate is produced.

## **85. Power to cancel or suspend certificates obtained on false or erroneous information.**

If it appears to the Central Government that the holder of a certificate granted under this Act has obtained it on false or erroneous information, it may cancel or suspend such certificate:

Provided that no order under this section shall be passed by the Central Government unless the person concerned had been given an opportunity of making a representation against the order proposed.

## **86. Recognition of certificates of competency or service granted in other countries.**

(1) If provision is made by the laws in force in any country other than India for the grant of certificates of competency or service similar to those referred to in this Act, and the Central Government is satisfied—

- (a) that the conditions under which any such certificates are granted in that country require standards of competency or service not lower than those required for the grant under this Act of corresponding certificates; and
- (b) that certificates granted under this Act are accepted in that country in lieu of the corresponding certificates granted under the laws of that country;

the Central Government may, by notification in the Official Gazette, declare that any certificate of competency or service granted under the laws in force in that country and specified in that notification, shall for the purposes of this Act be recognised as equivalent to the corresponding certificate of competency or service granted under this Act and specified in the notification.

(2) Whenever the provisions of this Act require that a person employed in any capacity on board any ship shall be the holder of a specified certificate of competency or service granted under this Act, any person employed in that capacity shall, if he is the holder of a certificate recognised under sub-section (1) as equivalent to the first-mentioned certificate or to a certificate of higher grade granted under this Act, and still in force, be deemed to be duly certificated under this Act.

## **87. Power to make rules as to grant, cancellation or suspension of certificates of competency.**

The Central Government may make rules<sup>a</sup> to carry out the provisions of this Part, relating to certificates of competency, and may, by such rules,—

- (a) prescribe the manner in which the horse-power of the engines of ships may be calculated, and the methods by which such calculation may be made in respect of different types of engines;
- (b) provide for the conduct of the examination of persons desirous of obtaining certificates of competency for the grades falling under section 78;
- (c) prescribe the qualifications to be respectively required of persons desirous of obtaining certificates of competency for the grades falling under section 78,

- (d) fix the fees to be paid by applicants for examination;
- (e) prescribe the form of such certificates and the manner in which copies of certificates are to be kept and recorded;
- (f) prescribe the circumstances or cases in which certificates of competency may be cancelled or suspended.

[a] For Rules to regulate the granting of Certificates of Competency to Masters and Mates in the Mercantile Marine made under the corresponding section 21 of the Merchant Shipping Act, 1923 (XXI of 1923), as amended from time to time, see S. R. O. 1965 dated 12-6-1954 published in Gaz. of Ind., 1954, Pt. II-sec. 3, page 1513.

## PART VII

### SEAMEN AND APPRENTICES

*Classification of seamen and prescription of minimum manning scale.*

#### 88. Power to classify seamen.

The Central Government may make rules for the classification of seamen other than ship's officers into different categories and for the prescription of the minimum manning scale of seamen of such categories for ships; and different scales may be prescribed for different classes of ships.

*Shipping masters.*

#### 89. Duties of shipping masters.

It shall be the duty of shipping masters —

- (a) to superintend and facilitate the engagement and discharge of seamen in the manner provided in this Act;
- (b) to provide means for securing the presence on board at the proper times of the seamen who are so engaged;
- (c) to facilitate the making of apprenticeship to the sea service;
- (d) to hear and decide disputes under section 132 between a master, owner or agent of a ship and any of the crew of the ship;
- (e) to perform such other duties relating to seamen, apprentices and merchant ships as are for the time being committed to them by or under this Act.

#### 90. Fees to be paid.

(1) The Central Government may, by notification in the Official Gazette, fix the fees which shall be payable upon all engagements and discharges effected before a shipping master.

(2) Scales of the fees payable for the time being shall be conspicuously placed in the shipping office, and a shipping master may refuse to proceed with any engagement or discharge unless the fees payable thereon are first paid.

(3) Every owner or master of a ship engaging or discharging any seaman in a shipping office or before a shipping master shall pay to the shipping master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of reimbursing himself in part, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain any sums not exceeding such sums as the Central Government may, by notification in the Official Gazette, fix in this behalf :

Provided that, if in any case the sums which may be so deducted exceed the amount of the fee payable by him, such excess shall be paid by him to the shipping master in addition to such fee.

(4) For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as hereinafter provided, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement

finally terminates; and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

*Apprenticeship to the sea service.*

**91. Assistance for apprenticeship to sea service.**

All shipping masters shall give to persons desirous of apprenticing boys not under fifteen years of age to the sea service or requiring apprentices not under that age for the sea service such assistance as may be in their power, and may receive from those persons such fees as the Central Government may fix.

**92. Special provisions as to apprenticeship to the sea service.**

(1) The apprenticeship of any boy to the sea service shall be by contract in writing between the apprentice or on his behalf by his guardian, if the boy is a minor, and the master or owner of the ship requiring the apprentice.

(2) Every such contract shall be executed in duplicate in the prescribed form and in accordance with the rules made by the Central Government in this behalf.

(3) Every such contract shall be executed in the presence of, and shall be attested by, the shipping master of the port, who shall, before the execution of the contract, satisfy himself—

(a) that the intended apprentice—

(i) understands the contents and provisions of the contract;

(ii) freely consents to be bound;

(iii) has attained the age of fifteen years; and

(iv) is in possession of a certificate to the effect that he is physically fit for sea service;

(b) if the intended apprentice is a minor, that his guardian's consent has been obtained to his being bound as an apprentice.

(4) Every such contract made in India and every assignment, alteration or cancellation thereof, and where the apprentice bound dies or deserts the fact of the death or desertion shall be recorded in the manner specified in section 93.

**93. Manner in which contract is to be recorded.**

For the purpose of the record—

(a) the master or owner of the ship to whom an apprentice to the sea service is bound shall transmit the contract executed in duplicate within seven days of the execution thereof, to the shipping master, who shall record one copy and endorse on the other the fact that it has been recorded and redeliver it to the master or owner;

(b) the master or owner shall notify any assignment or cancellation of the contract and the death or desertion of the apprentice to the shipping master, within seven days of the occurrence, if it occurs within India, or as soon as circumstances permit, if it occurs elsewhere.

**94. Production of contracts to authorised person before voyage in ship.**

(1) The master of a ship shall, before carrying an apprentice to sea from a port in India, cause the apprentice to appear before the shipping master before whom the crew are engaged, and shall produce to him the contract by which the apprentice is bound, and every assignment thereof.

(2) The name of the apprentice, with the date of the contract and of the assignments thereof, if any, and the names of the ports at which the same have been registered, shall be entered on the agreement with the crew.

*Seamen's employment offices***95. Business of seamen's employment offices.**

(1) It shall be the business of the seamen's employment offices—

(a) to regulate and control—

(i) the supply of such categories of seamen and for such class of ships as may be prescribed;

(ii) the recruitment of persons for employment as seamen and the retirement of seamen from such employment;

(iii) the promotion of seamen or changes of their categories;

(b) to maintain registers of seamen in respect of the categories prescribed under sub-clause (i) of clause (a);

(c) to perform such other duties relating to seamen and merchant ships as are, from time to time, committed to them by or under this Act.

(2) Where there is in existence at any port a seamen's employment office, then, notwithstanding anything to the contrary contained in any other provision of this Act, no person shall receive or accept to be entered on board any ship of the class prescribed under sub-section (1) any seaman of the categories prescribed under that sub-section, unless such seaman has been supplied by such seamen's employment office.

(3) The Central Government may make rules for the purpose of enabling seamen's employment offices effectively to exercise their powers under this Act; and in particular and, without prejudice to the generality of such power, such rules may provide for—

(a) consultation with respect to any specified matter by seamen's employment offices with such advisory boards or other authorities as the Central Government may think fit to constitute or specify in this behalf;

(b) the levy and collection of such fees as may be specified for any seamen's employment office for registering the name of any seaman in any register maintained by it;

(c) the issue of directions by the Central Government to any seamen's employment office with reference to the exercise of any of its powers;

(d) the supersession of any seamen's employment office which fails to comply with any such direction.

**96. Supply or engagement of seamen in contravention of Act prohibited.**

(1) A person shall not engage or supply a seaman to be entered on board any ship in India unless that person is the owner, master or mate of the ship, or is the agent of the owner or is bona fide the servant and in the constant employ of the owner, or is a director of a seamen's employment office, or a shipping master.

(2) A person shall not employ for the purpose of engaging or supplying a seaman to be entered on board any ship in India, any person unless that person is the owner, master or mate of the ship, or is the agent of the owner or is bona fide the servant and in the constant employ of the owner or is a director of a seamen's employment office, or a shipping master.

**Section 96 — Note 1**

[1] The word "servant" is a servant in the constant employ of the master (owner of a ship). The mere engagement of a person to supply seamen does not make that person a "servant" as contemplated by S. 25 (1) corresponding to S. 96. 1952 Cal 339 (339) [A I R V 39].

[2] Neither the Calcutta Maritime Board nor the Calcutta Liners' Conference supply the seamen. The registration entitles the seamen to get muster cards, which enable to appear at

the musters and there the Captains of the ships select and engage the seamen. It is after this selection and engagement that the Calcutta Liners' Conference pay Rs. 2 to the Calcutta Maritime Board out of which Re. 1 is their own contribution and Re. 1 is the contribution by seaman which is deducted from his wages. There is, therefore, no supply of a seaman within the meaning of S. 25 of the old Act. 1951 S C 196 (196) [A I R V 38 C 32] : 1951 S C R 284 : 52 Cri L Jour 510.

(3) A person shall not receive or accept to be entered on board any ship any seaman, if that person knows that the seaman has been engaged or supplied in contravention of this section or section 95.

### **97. Receipt of remuneration from seamen for shipping them prohibited.**

A person shall not demand or receive, either directly or indirectly, from any seaman, or from any person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, other than the fees authorised by this Act.

#### *Engagement of seamen*

### **98. Qualifications for, and medical examination of, seamen.**

(1) The Central Government may, by notification in the Official Gazette, direct that, with effect from such date as may be specified in the notification, seamen generally or any category of seamen in particular shall not be engaged or carried to sea to work in any capacity in any ship or in any class of ships so specified, unless each one of them possesses the prescribed qualifications.

(2) Except as otherwise provided under the rules made under sub-section (3), no person shall engage or carry to sea any seaman to work in any capacity in any ship or in any class of ships specified in this behalf by the Central Government, unless the seaman is in possession of a certificate in the prescribed form granted by the prescribed authority to the effect that he is physically fit to be employed in that capacity.

(3) The Central Government may make rules, for the purpose of giving effect to the provisions of this section; and, in particular, and, without prejudice to the generality of such power, any rules so made may provide for—

- (a) the courses of training to be pursued, the vocational standards to be attained or the tests to be passed by seamen generally or by any class of seamen in particular;
- (b) the standard of physical fitness required of seamen,\* different standards being laid down, if necessary, for different classes of seamen having regard to the age of the seamen to be examined or the nature of the duties to be performed by them;
- (c) the nature of the medical examination of seamen, the authorities by which the examination shall be conducted, and the fees payable therefor;
- (d) the form and contents of medical certificates and the period of their validity;
- (e) the re-examination by such medical authority as may be specified of persons who have been refused medical certificates of physical fitness in the first instance and the fees payable for such re-examination;
- (f) the circumstances in which, or the conditions subject to which, any seaman or class of seamen, or any ship or class of ships, may be exempted from the operation of sub-section (2).

[a] See the Indian Merchant Shipping (Medical Examination) Rules, 1958 made under S. 26A of the old Act of 1923.

### **99. Prohibition of engagement of seamen in Indian port without discharge certificate.**

No person shall engage or carry to sea any seaman under this Act in any ship, except a home-trade ship of less than two hundred tons gross, from any port in

#### **Section 97 — Note 1**

[1] Where a person demands money from another for issuing to him a muster card to enable to assemble at a place for being engaged as a seaman, he commits an offence under S. 26 (2) of the Merchant Shipping Act, for receiving remuneration under S. 25 (1). It is true that the money is demanded before the

man is employed and the payment does not also guarantee that he shall be employed. But since the payment is taken for the purpose of providing the person paying with employment, it is illegal and is an offence. 1952 Cal 339 (339, 340) [A J R V 39]. (Case decided with reference to old Act.)

India unless the seaman is in possession of a certificate of discharge or a continuous certificate of discharge issued under this Part.

### **100. Agreements with crew.**

The master of every Indian ship, except a home-trade ship of less than two hundred tons gross, shall enter into an agreement (in this Act called the agreement with the crew) in accordance with this Act with every seaman whom he engages in, and carries to sea as one of his crew from any port in India.

### **101. Form and contents of the agreement.**

(1) An agreement with the crew shall be in the prescribed form, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same.

(2) The agreement with the crew shall contain as terms thereof the following particulars, namely :

- (a) the name of the ship or ships on board which the seaman undertakes to serve;
- (b) either the nature and, as far as practicable, the duration of the intended voyage or engagement or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;
- (c) the number and description of the crew of different categories in each department;
- (d) the time at which each seaman is to be on board or to begin work;
- (e) the capacity in which each seaman is to serve;
- (f) the amount of wages which each seaman is to receive;
- (g) a scale of the provisions which are to be furnished to each seaman, such scale being not less than the scale fixed by the Central Government and published in the Official Gazette;
- (h) a scale of warm clothing and a scale of additional provisions to be issued to each seaman during periods of employment in specified cold regions ;
- (i) any regulations as to conduct on board and as to fines or other lawful punishments for misconduct, which have been sanctioned by the Central Government as regulations proper to be adopted, and which the parties agree to adopt;
- (j) payment of compensation for personal injury or death caused by accident arising out of and in the course of employment;
- (k) where it is agreed that the services of any seaman shall end at any port not in India, a stipulation to provide him either fit employment on board some other ship bound to the port at which he was shipped or to such other port in India as may be agreed upon, or a passage to some port in India free of charge or on such other terms as may be agreed upon;
- (l) stipulations relating to such other matters as may be prescribed.

(3) The agreement shall provide that in the event of a dispute arising outside India between the master, owner or agent of a ship and a seaman in respect of any matter touching the agreement, such dispute shall be referred to the Indian consular officer whose decision thereon shall be binding on the parties until the return of the ship to the port in India at which the seaman is to be discharged :

Provided that in the case of a ship other than an Indian ship, no such dispute shall be referred to the Indian consular officer if such reference is contrary to the rules of international law.

(4) The agreement with the crew shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of this Act) respecting the advance and

allotment of wages and may contain any other stipulations which are not contrary to law.

### **102. Engagement of seaman where agreement is made out of India.**

If the master of a ship registered at a port outside India has an agreement with the crew made in due form according to the law of that port or of the port in which her crew were engaged and engages a seaman in any port in India, not being the holder of a certificate of discharge or a continuous certificate of discharge issued in India, the seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

### **103. Special provisions with regard to agreements with crew of Indian ships.**

(1) The following provisions shall have effect with respect to every agreement made in India with the crew of an Indian ship, namely :

- (a) the agreement shall, subject to the provision of this Act as to substitutes, be signed by each seaman in the presence of a shipping master;
- (b) the shipping master shall cause the agreement to be read over and explained to each seaman, in a language understood by him or shall otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature;
- (c) when the crew is first engaged, the agreement shall be signed in duplicate, and one part shall be retained by the shipping master, and the other part shall be delivered to the master, and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship;
- (d) when a substitute is engaged in the place of a seaman who has duly signed the agreement and whose services are within twenty-four hours of the ship's putting to sea lost by death, desertion or other unforeseen cause, the engagement shall, if practicable, be made before a shipping master, and if not practicable, the master shall, before the ship puts to sea, if practicable, and, if not, as soon afterwards as possible, cause the agreement to be read over and explained to the substitute; and the substitute shall thereupon sign the same in the presence of a witness, who shall attest the signature.

(2) In the case of an agreement made in India with the crew of a foreign-going Indian ship the following provisions shall have effect in addition to the provisions specified in sub-section (1), namely:

- (a) the agreement may be made for a voyage of the ship or, if the voyages of the ship average less than six months in duration, may be made to extend over two or more voyages, and agreements so made are in this Act referred to as running agreements;
- (b) a running agreement may be made to extend over two or more voyages so that it shall terminate either within six months from the date on which it was executed, or on the first arrival of the ship at her port of destination in India after the expiration of that period, or on the discharge of cargo consequent upon such arrival, whichever of these dates shall be the latest:

Provided that no such running agreement shall continue in force, if, after the expiration of such period of six months as aforesaid, the ship proceeds on a voyage from a port outside India to any other such port which is not on the direct route or a customary route to her port of destination in India;

- (c) on every return to a port in India before the final termination of a running agreement, the master shall discharge or engage before the shipping master at such port any seaman whom he is required by law so to dis-

charge or engage, and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship leaves port, or that all those made have been made as required by law;

- (d) the master shall deliver the running agreement so endorsed to the shipping master, and the shipping master shall, if the provisions of this Act relating to agreements have been complied with, sign the endorsement and return the agreement to the master.

(3) In the case of an agreement made in India with the crew of a home-trade Indian ship of two hundred tons gross or more, the following provisions shall have effect in addition to the provisions specified in sub-section (1), namely :

- (a) the agreement shall not be for a period longer than six months, but if the period for which the agreement was entered into expires while the ship is not in an Indian port, the agreement shall continue in force until the ship is again in an Indian port:

Provided that, except with the consent in writing of the seaman concerned, the agreement shall not continue in force for more than three months after the expiration of the period for which it was entered into;

- (b) an agreement for service in two or more ships belonging to the same owner may be made by the owner instead of by the master, and the provisions of this Act with respect to the making of the agreement shall apply accordingly.

#### **104. Renewal of running agreements in certain cases.**

(1) When a running agreement has been made with a crew of a foreign-going Indian ship and the ship arrives after the expiration of a period of six months from the date on which it was executed at a port of destination in India which is not the port at which the crew have agreed to be discharged, the master may, with the previous sanction of the shipping master, renew the agreement with the crew, or may be required by the shipping master so to renew the agreement for the voyage from such port of destination to the port in India at which the crew have agreed to be discharged.

(2) If the master of the ship is required by the shipping master to renew the agreement as aforesaid and refuses so to renew it, any expenses which may be incurred by the Government for the subsistence of the crew and their conveyance to the port at which they have agreed to be discharged shall be a charge upon the ship, and shall be recoverable as if they were expenses incurred in respect of distressed seamen under the provisions of this Act.

#### **105. Changes in crew to be reported.**

The master of every foreign-going Indian ship and of every home-trade Indian ship of two hundred tons gross or more, the crew of which has been engaged before a shipping master, shall, before finally leaving the port where the engagement took place, sign and send to the nearest shipping master a full and accurate statement in the prescribed form, of every change which has taken place in his crew, and that statement shall be admissible in evidence.

#### **106. Certificate as to agreement with crew.**

(1) In the case of a foreign-going Indian ship or a home-trade Indian ship of two hundred tons gross or more, on the due execution of an agreement with the crew in accordance with this Act, and also when, in the case of a foreign-going Indian ship, the agreement is a running agreement, on compliance by the master before the second and every subsequent voyage made after the first commencement of the agreement with the provisions of this Act respecting that agreement, the shipping master shall grant the master of the ship a certificate to that effect.



(2) The master of every such ship shall, before proceeding to sea, produce that certificate to the customs collector whose duty it is to grant a port clearance.

(3) No customs collector shall clear any such ship outwards without the production of such certificate, and, if any such ship attempts to go to sea without a clearance, the customs collector may detain her until such certificate as aforesaid is produced.

(4) The master of every such ship shall, within forty-eight hours after the ship's arrival at the port in India at which the crew is to be discharged, deliver such agreement to a shipping master at the port; and such shipping master shall thereupon give to the master a certificate of such delivery; and no customs collector shall clear any such ship inwards without the production of such certificate.

### **107. Copy of agreement to be made accessible to the crew.**

The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement and, if necessary, a certified translation thereof in a language understood by the majority of the crew (omitting the signatures), to be placed or posted up in such part of the ship as to be accessible to the crew.

### **108. Alteration in agreement with the crew.**

Every erasure, interlineation or alteration in any agreement with the crew (except additions made for the purpose of shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of—

- (a) all the persons interested in such erasure, interlineation or alteration by the written attestation, if made in India, of some shipping master, or customs collector; or
- (b) an Indian Consular Officer, if made out of India.

*Employment of young persons.*

### **109. Employment of children.**

No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except—

- (a) in a school ship, or training ship, in accordance with the prescribed conditions; or
- (b) in a ship in which all persons employed are members of one family; or
- (c) in a home-trade ship of less than two hundred tons gross; or
- (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.

### **110. Engagement of young persons as trimmers or stokers.**

(1) Save as otherwise provided in sub-sections (2) and (3), no young person shall be engaged or carried to sea to work as a trimmer or stoker in any ship.

(2) Sub-section (1) shall not apply—

- (a) to any work of trimming or stoking done by a young person in a school ship or training ship in accordance with the prescribed conditions; or
- (b) to any work of trimming or stoking done by a young person in a ship which is mainly propelled otherwise than by steam; or
- (c) to the engagement or carrying to sea of a person over sixteen years of age to work as a trimmer or stoker on a coasting ship, provided he is employed in accordance with the prescribed conditions.

(3) Where in any port a trimmer or stoker is required for any ship other than a coasting ship, and no person over eighteen years of age is available,

two young persons over sixteen years of age may be engaged and carried to sea to do the work which would otherwise have been done by one person over eighteen years of age.

(4) There shall be included in every agreement with the crew in ships to which this section applies a short summary of the provisions of this section.

### **111. Medical examination of young persons.**

(1) Save as otherwise provided in sub-section (2), no young person shall be engaged or carried to sea to work in any capacity in any ship, unless there has been delivered to the master a certificate granted by a prescribed authority that the young person is physically fit to be employed in that capacity.

(2) Sub-section (1) shall not apply,—

(a) to the employment of a young person in a ship in which all persons employed are members of one family; or

(b) where the shipping master, on the ground of urgency, has authorised a young person to be engaged and carried to sea, without the certificate required by sub-section (1) being delivered to the master, and the young person is not employed beyond the first port at which the ship in which he is so engaged calls except in accordance with the provisions of sub-section (1).

(3) A certificate of physical fitness required under this section shall remain in force for one year only from the date on which it is granted.

### **112. Maintenance of list or register of young persons in a ship.**

There shall be included in every agreement with the crew of every Indian ship and every other ship which engages young persons in India, a list of young persons who are members of the crew, together with particulars of the dates of their birth, and, in the case of any such ship where there is no agreement, the master shall keep a register of young persons with particulars of the dates of their birth and of the dates on which they became or ceased to be members of the crew.

### **113. Power to make rules respecting employment of young persons.**

(1) The Central Government may make rules prescribing—

(a) the conditions of employment of young persons in any capacity in school ships and training ships, and the authorities by whom and the manner in which the inspection of their work shall be carried out;

(b) the conditions of employment of young persons as trimmers or stokers in coasting ships;

(c) the authorities whose certificates of physical fitness shall be accepted for the purposes of section 111; and

(d) the form of the register of young persons to be maintained in ships where there is no agreement with the crew.

(2) Rules under clause (b) of sub-section (1) shall be made after consultation with such organisations in India as the Central Government may consider to be most representative of the employers of seamen and of seamen.

*Engagement of seamen by masters of ships other than Indian ships.*

### **114. Engagements between seamen and masters of ships other than Indian ships.**

(1) When the master of a ship other than an Indian ship engages a seaman at any port in India to proceed to any port outside India, he shall enter into an agreement with such seaman, and the agreement shall be made before a shipping master in the manner provided by this Act for the making of agreements in the case of foreign-going Indian ships.

(2) All the provisions of this Act respecting the form of such agreements and the stipulations to be contained in them and the making and signing of the same, shall be applicable to the engagement of such seaman.

(3) The master of a ship other than an Indian ship shall give to the shipping master a bond with the security of some approved person resident in India for such amount as may be fixed by the Central Government in respect of each seaman engaged by him at any port in India and conditioned for the due performance of such agreement and stipulations, and for the repayment to the Central Government of all expenses which may be incurred by it in respect of any such seaman who is discharged or left behind at any port out of India and becomes distressed and is relieved under the provisions of this Act:

Provided that the shipping master may waive the execution of a bond under this section where the owner of the ship has an agent at any port in India and such agent accepts liability in respect of all matters for which the master of the ship would be liable if he were to execute a bond under this section or may accept from the agent such security as may be approved by the Central Government.

(4) The fees fixed under section 90 shall be payable in respect of every such engagement, and deductions from the wages of seamen so engaged may be made to the extent and in the manner allowed under the said section 90.

### **115. Power to prohibit engagement of persons as seamen.**

The Central Government or any officer authorised by it in this behalf, if satisfied that in the national interest or in the interests of seamen generally it is necessary so to do, may, by order in writing, prohibit the owner, master or agent of any ship other than an Indian ship specified in the order from engaging in India or in any specified part of India, any person to serve as a seaman on such ship.

### **116. Engagement of seamen outside India for Indian ships.**

With respect to the engagement of seamen outside India, the following provisions shall have effect :—

When the master of an Indian ship engages a seaman at any port outside India, the provisions of this Act respecting agreements with the crew made in India shall apply subject to the following modifications :—

- (a) at any such port having an Indian consular officer, the master shall, before carrying the seaman to sea, procure the sanction of the consular officer, and shall, if not contrary to any law in force in that port, engage the seaman before that officer ;
- (b) the master shall request the Indian consular officer to endorse upon the agreement an attestation to the effect that it has been signed in his presence and otherwise made as required by this Act, and that it has his sanction, and if the attestation is not made, the burden of proving that the engagement was made as required by this Act shall lie upon the master.

### **117. Power to board ships and muster seamen.**

For the purpose of preventing seamen from being taken on board any ship at any port in India contrary to the provisions of this Act, any shipping master or deputy or assistant shipping master or any director, deputy director or assistant director of the seamen's employment office, may enter at any time on board any such ship upon which he has reason to believe that seamen have been shipped, and may muster and examine the several seamen employed therein.

*Discharge of seamen.***118. Discharge before shipping master.**

(1) When a seaman serving in a foreign-going ship is, on the termination of his engagement, discharged in India, he shall, whether the agreement with the crew be an agreement for the voyage or running agreement, be discharged in the manner provided by this Act in the presence of a shipping master.

(2) The provisions of sub-section (1) shall apply in relation to the discharge of seamen serving in a home-trade Indian ship of two hundred tons gross or more as they apply in relation to the discharge of seamen serving in a foreign-going ship :

Provided that this sub-section shall not apply where a seaman is discharged from a ship under an agreement made in accordance with section 103 for service in two or more ships, for the purpose of being engaged in another ship to which the agreement relates.

(3) If the master, owner or agent of a home-trade ship, other than a ship to which the last preceding sub-section applies, so desires, the seamen of that ship may be discharged in the same manner as seamen discharged from a foreign-going ship.

**119. Certificate of discharge.**

(1) The master shall sign and give to a seaman discharged from his ship in India, either on his discharge or on payment of his wages, a certificate of his discharge in the prescribed form specifying the period of his service and the time and place of his discharge.

(2) The master shall also, upon the discharge of every certificated officer, whose certificate of competency has been delivered to and retained by him, return the certificate to the officer.

**120. Certificate as to work of seamen.**

(1) When a seaman is discharged from a ship in India, the master shall furnish to the shipping master before whom the discharge is made a report in the prescribed form stating—

- (a) the quality of the work of the seaman; or
  - (b) whether the seaman has fulfilled his obligations under the agreement with the crew ; or
  - (c) that he declines to express an opinion on those particulars ;
- and the shipping master shall, if the seaman so desires, give to him or endorse on his certificate of discharge a copy of such report.

(2) A seaman who is entitled to a certificate of discharge under section 119 may, if he so desires, be granted by the master, in lieu of the certificate referred to in sub-section (1) of the said section or the report referred to in sub-section (1) of this section, a continuous discharge certificate specifying the period of his service together with an endorsement stating—

- (a) the quality of the work of the seaman; or
- (b) whether the seaman has fulfilled his obligations under the agreement with the crew; or
- (c) that he declines to express an opinion on those particulars ;

and the master shall thereupon sign and give such continuous discharge certificate notwithstanding anything to the contrary contained in sub-section (1).

(3) If the master states that he declines to express an opinion on the particulars mentioned in clauses (a) and (b) of sub-section (1) or sub-section (2), he shall enter in the official log book his reasons for so declining.

**121. Discharge and leaving behind of seamen by masters of Indian ships.**

(1) The master of an Indian ship shall not—

- (a) discharge a seaman before the expiration of the period for which he was engaged, unless the seaman consents to his discharge; or
- (b) except in circumstances beyond his control, leave a seaman or apprentice behind;

without the authority of the officer specified in this behalf by the Central Government and the officer aforesaid shall certify on the agreement with the crew that he has granted such authority, and also the reason for the seaman being discharged or the seaman or apprentice being left behind.

(2) The officer aforesaid to whom application is made for authority in terms of sub-section (1), shall investigate the grounds on which the seaman is to be discharged or the seaman or apprentice left behind and may in his discretion grant or refuse to grant such authority:

Provided that he shall not refuse to grant his authority if he is satisfied that the seaman has without reasonable cause—

- (a) failed or refused to join his ship or to proceed to sea therein; or
- (b) been absent from his ship without leave, either at the commencement or during the progress of a voyage for a period of more than forty-eight hours.

(3) The officer aforesaid shall keep a record of all seamen or apprentices discharged or left behind with his authority; and whenever any charge is made against a seaman or apprentice under section 191, the fact that no such authority is so recorded shall be prima facie evidence that it was not granted.

**122. Wages and other property of seaman or apprentice left behind.**

(1) If a seaman or apprentice is left behind, the master shall enter in the official log book a statement of the amount due to the seaman or apprentice in respect of wages at the time when he was left behind and of all property left on board by him, and shall take such property into his charge.

(2) Within forty-eight hours after the arrival of the ship at the port in India at which the voyage terminates, the master shall deliver to the shipping master—

- (a) a statement of the amount due to the seaman or apprentice in respect of wages, and of all property left on board by him; and
- (b) a statement, with full particulars, of any expenses that may have been caused to the master or owner of the ship by the absence of the seaman or apprentice, where the absence is due to a contravention by the seaman or apprentice of section 191; and, if required by the shipping master to do so shall furnish such vouchers as are reasonably required to verify the statements.

(3) The master shall at the time when he delivers the statements referred to in sub-s. (2) to the shipping master also deliver to him the amount due to the seaman or apprentice in respect of wages and the property that was left on board by him, and the shipping master shall give to the master a receipt therefor in the prescribed form.

(4) The master shall be entitled to be reimbursed out of the wages or property referred to in cl. (a) of sub-s. (2) such expenses shown in the statement referred to in cl. (b) of that sub-section as appear to the shipping master to be properly chargeable.

**123. Repatriation of seamen on termination of service at foreign port.**

(1) When the service of a seaman or apprentice terminates without the consent of the said seaman or apprentice at a port outside India, and before the

expiration of the period for which the seaman was engaged or the apprentice was bound, the master or owner of the ship shall, in addition to any other relative obligation imposed on either of them by this Act, make adequate provision for the maintenance of the seaman or apprentice according to his rank or rating, and for the return of that seaman or apprentice to a proper return port.

(2) If the master or owner fails without reasonable cause to comply with sub-section (1), the expenses of maintenance and of the journey to the proper return port shall, if defrayed by the seaman or apprentice, be recoverable as wages due to him, and if defrayed by an Indian consular officer, be regarded as expenses falling within the provisions of sub-sections (3) and (4) of section 161.

*Explanation :* Inability to provide the said expenses shall not, for the purposes of this sub-section, be regarded as reasonable cause.

## **124. Discharge of seamen on change of ownership.**

(1) If an Indian ship is transferred or disposed of while she is at or on a voyage to any port outside India, every seaman or apprentice belonging to that ship shall be discharged at that port, unless he consents in writing in the presence of the Indian consular officer to complete the voyage in the ship if continued.

(2) If a seaman or apprentice is discharged from an Indian ship in terms of sub-s. (1), the provisions of section 123 shall apply as if the service of the seaman or apprentice had terminated without his consent and before the expiration of the period for which the seaman was engaged or the apprentice was bound.

(3) Every seaman or apprentice discharged in terms of sub-s. (1) shall, if the voyage for which he was engaged is not continued, be entitled to the wages to which he would have been entitled if his service had been wrongfully terminated by the owner before the expiration of the period for which the seaman was engaged or the apprentice was bound.

### *Payment of wages*

## **125. Master to deliver account of wages.**

(1) The master of every ship shall, before paying off or discharging a seaman under this Act, deliver at the time and in the manner provided by this Act a full and true account in the form prescribed of the seaman's wages and of all deductions to be made therefrom on any account whatever.

(2) The said account shall be delivered, either to the seaman himself, at or before the time of his leaving the ship, or to the shipping master not less than twenty-four hours before the discharge or payment off.

## **126. Disrating of seamen.**

(1) Where the master of a ship disrates a seaman, he shall forthwith enter or cause to be entered in the official log book a statement of the disrating, and furnish the seaman with a copy of the entry; and any reduction of wages consequent on the disrating shall not take effect until the entry has been so made and the copy so furnished.

(2) Any reduction of wages consequent on the disrating of a seaman shall be deemed to be a deduction from wages within the meaning of Ss. 125 and 127.

## **127. Deductions from wages of seamen.**

(1) A deduction from the wages of a seaman shall not be allowed unless it is included in the account delivered in pursuance of this Act except in respect of a matter happening after such delivery.

(2) The master shall during the voyage enter the various matters in respect of which the deductions are made, with the amount of the respective deductions

as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.

### **128. Payment of wages before shipping master.**

(1) Where a seaman is discharged in India before a shipping master he shall receive his wages through, or in the presence of, the shipping master unless a competent Court otherwise directs.

(2) If the master or owner of a home-trade ship of less than two hundred tons gross so desires, the seamen of that ship may receive their wages in the same manner as seamen discharged from a foreign-going ship, or from a home-trade ship of two hundred tons gross or more.

### **129. Time of payment of wages.**

(1) The master, owner or agent of every ship shall pay to every seaman his wages within four days after the seaman's discharge, and the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him.

(2) If a master, owner or agent fails without reasonable cause to make payment at that time, he shall pay to the seaman such sum not exceeding the amount of two days' pay for each of the days commencing from the day of discharge during which payment is delayed as the shipping master may in each case decide, but the sum so payable shall not exceed ten days' double pay.

(3) Any sum payable under this section may be recovered as wages.

### **130. Settlement of wages.**

(1) Where a seaman is discharged and the settlement of his wages completed before a shipping master, the seaman shall sign in the presence of the shipping master a release in the form prescribed of all claims in respect of the past voyage or engagement, and the release shall also be signed by the master, owner or agent of the ship and attested by the shipping master.

(2) The release so signed and attested shall be retained by the shipping master and shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement but shall not debar a claim to compensation for personal injury caused by accident arising out of and in the course of employment.

(3) A copy of the release, certified under the hand of the shipping master to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

(4) No payment, receipt or settlement of the wages of a seaman made otherwise than in accordance with this Act shall operate or be admitted as evidence of the release or satisfaction of any claim in respect of such wages.

(5) Upon any payment being made by a master before a shipping master, the shipping master shall, if required, sign and give to the master a statement of the whole amount so paid, and the statement shall as between the master and his employer, be admissible as evidence that the master has made the payments therein mentioned.

(6) Notwithstanding anything contained in the preceding sub-sections a seaman may except from the release signed by him any specified claim or demand against the master or owner of the ship, and a note of any claim or demand so excepted shall be entered upon the release; and the release shall not operate as a discharge and settlement of any claim or demand so noted, nor shall sub-section (4) apply to any payment, receipt or settlement made with respect to any such claim or demand.

**131. Master to give facilities to seaman for remitting wages.**

Where a seaman expresses to the master of the ship his desire to have facilities afforded to him for remitting any part of the balance of the wages due to him to a savings bank or to a near relative, the master shall give to the seaman all reasonable facilities for so doing so far as regards so much of the balance as is within the limits, if any, specified in this behalf by the Central Government, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port or otherwise than conditionally on the seaman going to sea in the ship.

**132. Decision of questions by shipping masters.**

(1) Where under the agreement with the crew any dispute arises at any port in India between the master, owner or agent of a ship and any of the crew of the ship, it shall be submitted to the shipping master,—

- (a) where the amount in dispute does not exceed three hundred rupees, at the instance of either party to the dispute ;
- (b) in any other case, if both parties to the dispute agree in writing to submit the dispute to the shipping master.

(2) The shipping master shall hear and decide the dispute so submitted and an award made by him upon the submission shall be conclusive as to the rights of the parties, and any document purporting to be such submission or award shall be *prima facie* evidence thereof.

(3) An award made by a shipping master under this section may be enforced by a Magistrate in the same manner as an order for the payment of wages made by such Magistrate under this Act.

(4) Nothing in the Arbitration Act, 1940, shall apply to any matter submitted to a shipping master for decision under this section.

**133. Power of shipping master to require production of ship's papers.**

In any proceedings under this Act before a shipping master relating to the wages, claims or discharge of a seaman, the shipping master may require the owner, master or agent or any mate or other member of the crew to produce any log books, papers, or other documents in his possession or power relating to any matter in question in the proceedings, and may require the attendance of and examine any of those persons being then at or near the place on the matter.

**134. Rule as to payment to seamen in foreign currency.**

Where a seaman or apprentice has agreed with the master of a ship for payment of his wages in Indian or other currency, any payment of, or on account of, his wages, if made in any currency other than that stated in the agreement shall, notwithstanding anything in the agreement, be made at the rate of exchange for the time being current at the place where the payment is made.

*Advance and allotment of wages***135. Advance of wages.**

(1) Any agreement with the crew may contain a stipulation for payment to a seaman, conditional on his going to sea in pursuance of the agreement of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement.

(2) Save as aforesaid, an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman, conditional on his going to sea from any port in India shall be void, and no money paid in satisfaction or in respect of any such agreement shall be deducted from the seaman's wages, and no person shall have any right of action, suit or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.



(3) No seaman, who has been lawfully engaged and has received under his agreement an advance payment, wilfully or through misconduct shall fail to attend his ship or desert therefrom before the payment becomes really due to him.

(4) Where it is shown to the satisfaction of a shipping master that a seaman lawfully engaged has wilfully or through misconduct failed to attend his ship, the shipping master shall report the matter to the Director-General who may direct that any of the seaman's certificates of discharge referred to in Ss. 119 and 120 shall be withheld for such period as he may think fit; and while a seaman's certificate of discharge is so withheld, the Director-General or any other person having the custody of the necessary documents may, notwithstanding anything in this Act, refuse to furnish copies of any such certificate certified or extracts therefrom.

### **136. Allotment notes respecting seamen's wages.**

(1) A seaman may require that a stipulation be inserted in the agreement for the allotment, by means of an allotment note, of any part (not exceeding three-fourths) of the amount of the monthly wages payable to him in favour of any such member of his family or any such relative or for any such purpose approved in this behalf by the Central Government by general or special order, as may be specified in the note.

(2) Every shipping master or other officer before whom the seaman is engaged shall, after the seaman has signed the agreement, inquire from the seaman whether he requires such a stipulation for the allotment of his wages by means of an allotment note.

(3) Whenever a seaman requires such a stipulation, the stipulation shall be inserted in the agreement of the crew, and such stipulation shall be deemed to have been agreed to by the master.

(4) An allotment note shall be in the prescribed form and shall be signed by the owner, master or agent of the ship and by the seaman.

### **137. Commencement and payment of sums allotted.**

(1) A payment under an allotment note shall begin at the expiry of one month from the date of the agreement, and shall be made at the expiration of every subsequent month after the first month and shall be made only in respect of the wages earned before the date of payment.

(2) The owner, master or agent who has authorised the drawing of an allotment note shall pay to the shipping master on demand the sums due under the note, and, if he fails to do so, the shipping master may sue for and recover the same with costs:

Provided that no such sum shall be recoverable if it is shown to the satisfaction of the Court trying the case that the seaman has forfeited or ceased to be entitled to the wages out of which the allotment was to have been paid but the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the Court either by the official statement of the change in the crew caused by his absence made and signed by the master as by this Act is required or by a certified copy of some entry in the official log book to the effect that he has died or left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence of whatever description, as the Court may consider sufficient.

(3) The shipping master on receiving any such sum as aforesaid shall pay it over to the person named in that behalf in the allotment note.

(4) All such receipts and payments shall be entered in a book to be kept for the purpose, and all entries in the said book shall be authenticated by the signature of the shipping master.

(5) The said book shall at all reasonable times be open to the inspection of the parties concerned.

*Rights of seamen in respect of wages*

**138. Right to wages and provisions.**

A seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

**139. Right to recover wages and salvage not to be forfeited.**

(1) A seaman shall not by any agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.

(2) Nothing in this section shall apply to a stipulation made by the seamen belonging to any ship which according to the terms of the agreement is to be employed on salvage service with respect to the remuneration to be paid to them for salvage service to be rendered by that ship to any other ship.

**140. Wages not to depend on freight.**

(1) The right to wages shall not depend on the earning of freight, and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same notwithstanding that freight has not been earned, but in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages.

(2) Where a seaman or apprentice who would but for death be entitled by virtue of this section to demand and recover any wages dies before the wages are paid, they shall be paid and applied in manner provided by this Act with respect to the wages of a seaman who dies during a voyage.

**141. Wages on termination of service by wreck, illness, etc.**

(1) Where the service of any seaman engaged under this Act terminates before the date contemplated in the agreement by reason of the wreck, loss or abandonment of the ship or by reason of his being left on shore at any place outside India under a certificate granted under this Act of his unfitness or inability to proceed on the voyage, the seaman shall be entitled to receive—

(a) in the case of wreck, loss or abandonment of the ship—

(i) wages at the rate to which he was entitled at the date of termination of his service for the period from the date his service is so terminated until he is returned to and arrives at a proper return port:

Provided that the period for which he shall be entitled to receive wages shall be not less than one month; and

(ii) compensation for the loss of his effects—

(a) in the case of a seaman employed on a home-tradeship, of not less than one month's wages; and

(b) in the case of a seaman employed on a foreign-going ship, of not less than three months' wages;

(b) in the case of unfitness or inability to proceed on the voyage, wages for the period from the date his service is terminated until he is returned to and arrives at a proper return port.

(2) A seaman shall not be entitled to receive wages under sub-clause (i) of clause (a) of sub-section (1) in respect of any period during which—

- (a) he was, or could have been, suitably employed; or
- (b) through negligence he failed to apply to the proper authority for relief as a distressed or destitute seaman.

(3) Any amount payable by way of compensation under sub-clause (ii) of clause (a) of sub-section (1) shall be deposited with the shipping master at the port of engagement in India for payment to the seaman, or, in the case of a deceased seaman, to his legal heirs.

#### **142. Wages not to accrue during absence without leave, refusal to work or imprisonment.**

(1) A seaman or apprentice shall not be entitled to wages—

- (a) for any period during which he is absent without leave from his ship or from his duty; or
- (b) for any period during which he unlawfully refuses or neglects to work when required; or
- (c) unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned.

(2) A seaman or apprentice shall not be disentitled to claim wages for any period during which he has not performed his duty if he proves that he was incapable of doing so by reason of illness, hurt or injury, unless it be proved that—

- (a) his illness, hurt or injury was caused by his own wilful act or default or his own misbehaviour; or
- (b) his illness was contracted or his hurt or injury was sustained at a proper return port and was not attributable to his employment; or
- (c) he has unreasonably refused to undergo medical or surgical treatment for his illness, hurt or injury involving no appreciable risk to his life.

#### **143. Compensation to seamen for premature discharge.**

(1) If a seaman having signed an agreement is discharged, otherwise than in accordance with the terms thereof, without fault on his part justifying the discharge and without his consent, he shall be entitled to receive from the master, owner or agent, in addition to any wages he may have earned, as due compensation for the damage caused to him by the discharge, such sum as the shipping master may fix having regard to the circumstances relating to the discharge:

Provided that the compensation so payable shall not exceed—

- (a) in the case of a seaman who has been discharged before the commencement of a voyage, one month's wages; and
- (b) in the case of a seaman who has been discharged after the commencement of a voyage, three month's wages.

(2) Any compensation payable under this section may be recovered as wages.

#### **144. Restriction on sale of and charge upon wages.**

(1) As respects wages due or accruing to a seaman or apprentice—

- (a) they shall not be subject to attachment by order of any court;
- (b) an assignment thereof made prior to the accruing thereof shall not bind the person making the same;

##### **Section 144 — Note 1**

[1] British tug registered in India—Tug used only for touring ships whenever any ship entered port — Section does not apply and

wages of seamen on such tug are not exempt from attachment. 1938 Cal 111 (113) [A I R V 25] : ILR (1938) 1 Cal 433.

(c) a power-of-attorney or authority for the receipt thereof shall not be irrevocable;

(d) a payment of wages to a seaman or apprentice shall be valid in law notwithstanding any previous assignment of those wages or any attachment thereof or encumbrance thereon.

(2) The provisions of clauses (b) and (c) of sub-section (1) shall not apply to so much of the wages of a seaman as have been or are hereafter assigned by way of contribution to any fund or scheme approved in this behalf by the Central Government, the main purpose of which is the provision for seamen of health or social insurance benefits and the provisions of clauses (a) and (d) of sub-section (1) shall not apply to anything done or to be done for giving effect to such an assignment.

(3) Nothing in this section shall affect the provisions of this Act or any other law for the time being in force with respect to allotment notes.

*Mode of recovering wages.*

### 145. Summary proceedings for wages.

(1) A seaman or apprentice or a person duly authorised on his behalf may, as soon as any wages due to him become payable, apply to any Magistrate exercising jurisdiction in or near the place at which his service has terminated or at which he has been discharged, or at which any person upon whom the claim is made is or resides, and the Magistrate shall try the case in a summary way and the order made by the Magistrate in the matter shall be final.

(2) An application under sub-section (1) may also be made by any officer authorised by the Central Government in this behalf by general or special order.

### 146. Restrictions on suits for wages.

A proceeding for the recovery of wages due to a seaman or apprentice shall not be instituted by or on behalf of any seaman or apprentice in any civil Court except where—

(a) the owner of the ship has been declared insolvent;

(b) the ship is under arrest or sold by the authority of any Court;

(c) a Magistrate refers a claim to the Court.

### 147. Wages not recoverable outside India in certain cases.

Where a seaman is engaged for a voyage which is to terminate in India, he shall not be entitled to sue in any Court outside India for wages unless he is discharged with such sanction as is required by this Act, and with the written consent of the master, or proves such ill-usage on the part, or by the authority, of the master, as to warrant a reasonable apprehension of danger to his life if he were to remain on board.

### 148. Remedies of master for wages, disbursements, etc.

(1) The master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act or by any law or custom.

#### Section 145 — Note 1

[1] The Act does not specify the form which the summary proceedings under the section should take. 1941 Cal 448 (449) [AIR V 28] : ILR (1941) 1 Cal 166 : 42 Cri L Jour 785 (DB).

[2] Section indicates that it is alternative procedure exercised at the option of the claimant. He may sue in summary manner instead of having recourse either to the Shipping Master or the Court of Small Causes. 1941 Cal 448 (449) [AIR V 28] : ILR (1941) 1 Cal 166 : 42 Cri L Jour 785 (DB).

[3] Complaint filed under Act — Complaint has to be enquired into in accordance with provision of Act — It cannot be dismissed under S. 203, Criminal P. C. 1933 Cal 647 (647) [AIR V 20] : 35 Cri L Jour 25 (DB).

[4] Order dismissing seaman's suit for wages under section — Order is final and cannot be interfered with in revision. 1941 Cal 448 (449) [AIR V 28] : 1 L R (1941) 1 Cal 166 : 42 Cri L Jour 785 (DB) \* ('39) 43 Cal W N 612 (613). (12 Cal 536, *Rel. on.*)

(2) The master of a ship and every person lawfully acting as master of a ship by reason of the decease or incapacity from illness of the master of the ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3) If in any proceeding in any Court touching the claim of a master in respect of such wages, disbursements or liabilities any set-off is claimed or any counter-claim is made, the Court may enter into, and adjudicate upon, all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding and may direct payment of any balance found to be due.

*Power of Courts to rescind contracts.*

**149. Power of Courts to rescind contract between master, owner or agent and seaman or apprentice.**

Where a proceeding is instituted in any Court in relation to any dispute between master, owner or agent of a ship and a seaman or apprentice, arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the Court, if, having regard to all the circumstances of the case, it thinks it just to do so, may rescind any contract between the master, owner or agent and the seaman or apprentice, upon such terms as the Court may think just, and this power shall be in addition to any other jurisdiction which the Court can exercise independently of this section.

*Disputes between seamen and employers.*

**150. Power to refer disputes between seamen and their employers to tribunals.**

(1) Where the Central Government is of opinion that any dispute between seamen or any class of seamen or of any union of seamen and the owners of ships in which such seamen are employed or are likely to be employed exists or is apprehended and such dispute relates to any matter connected with or incidental to the employment of the seamen, the Central Government may, by notification in the Official Gazette, constitute a tribunal consisting of one or more persons, and refer the dispute to the tribunal for adjudication.

(2) The tribunal so constituted shall have power to regulate its own procedure and shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) issuing commissions for the examination of witnesses;
- (d) any other matter which may be prescribed; and any proceeding before the tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any proceeding before the tribunal except with the consent of the other party or parties to the proceeding and with the leave of the tribunal.

(4) The tribunal shall dispose of the reference expeditiously and shall, as soon as practicable on the conclusion of the proceedings, submit its award to the Central Government.

(5) On receipt of the award, the Central Government shall cause it to be published and the award shall become enforceable on the expiry of thirty days from the date of such publication :

Provided that where the Central Government is of opinion that it will be inexpedient on public grounds to give effect to the award or any part of it, it

may before the expiry of the said period of thirty days by order in the Official Gazette either reject the award or modify it, and where the Central Government does so, the award shall not become enforceable or shall become enforceable subject to the modifications, as the case may be.

(6) An award which has become enforceable under this section shall be binding on—

(a) all parties to the dispute;

(b) where any party to the dispute is the owner of the ship, his heirs, successors, or assigns.

(7) Save as otherwise provided in the award, an award shall remain in operation for a period of one year from the date on which it becomes enforceable and shall thereafter continue to remain in operation until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(8) Any money due to a seaman from the owner of a ship under an award may be recovered as wages.

(9) Nothing contained in the Industrial Disputes Act, 1947, shall apply to any dispute between seamen or any class of seamen or any union of seamen and the owners of ships in which such seamen are employed or are likely to be employed.

### **151. Conditions of service, etc., to remain unchanged during pendency of proceedings before tribunal.**

During pendency of proceedings under section 150,—

(a) no seamen or class of seamen or union of seamen shall go or remain on strike or otherwise act in a manner prejudicial to the normal operation of the ships in which the seamen are employed or are likely to be employed; and

(b) no owner of a ship shall—

(i) alter to the prejudice of the seamen concerned in the dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(ii) discharge or punish any seaman in respect of any matter connected with the dispute.

*Property of deceased seamen and apprentices.*

### **152. Master to take charge of the effects of deceased seamen.**

(1) If any seaman or apprentice engaged on any ship, the voyage of which is to terminate in India, dies during that voyage, the master of the ship shall report the death to the next-of-kin of the seaman or apprentice and to the shipping master at his port of engagement and shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.

(2) The master shall thereupon enter in the official log book the following particulars, namely :—

(a) a statement of the amount of money and a detailed description of the other effects;

(b) a statement of the sum due to the deceased for wages and of the amount of deduction, if any, to be made from the wages.

(3) The said money, balance of wages and other effects are in this Act referred to as the property of the seaman or apprentice.

### **153. Dealing with and account of property of seamen who die during voyage.**

(1) If any seaman or apprentice engaged on any ship, the voyage of which is to terminate in India, dies during that voyage and the ship before coming to a

port in India touches and remains for forty-eight hours at some port elsewhere, the master shall report the case to the Indian consular officer at such port and shall give to the officer any information he requires as to the destination of the ship and probable length of the voyage.

(2) The Indian consular officer may, if he thinks it expedient, require the property of the seaman or apprentice to be delivered and paid to him and shall thereupon give to the master a receipt therefor and endorse under his hand upon the agreement with the crew such particulars with respect thereto as the Central Government may require.

(3) The receipt shall be produced by the master to the shipping master within forty-eight hours after his arrival at his port of destination in India.

(4) Where a seaman or apprentice dies as aforesaid and the ship proceeds at once to a port in India without touching and remaining as aforesaid at a port elsewhere or the Indian consular officer does not require the delivery and payment of the property as aforesaid, the master shall, within forty-eight hours after his arrival at his port of destination in India, pay and deliver the property to the shipping master at that port.

(5) A deduction claimed by the master in such account shall not be allowed unless verified by a entry in the official log book, and also by such other vouchers, if any, as may be reasonably required by the shipping master.

(6) A shipping master in India shall grant to a master upon due compliance with such provisions of this section as relate to acts to be done at the port of destination a certificate to that effect.

#### **154. Master to pay and deliver property of deceased seamen.**

(1) If the master of a ship fails to comply with the provisions of this Act with respect to taking charge of the property of a deceased seaman or apprentice, or to making in the official log book the proper entries relating thereto, or to the payment or delivery of such property, he shall be accountable for such property to the shipping master as aforesaid, and shall pay and deliver the same accordingly.

(2) The property may be recovered in the same court and manner in which the wages of seamen may be recovered under this Act.

#### **155. Property of deceased seaman left abroad but not on board ship.**

If any seaman or apprentice on an Indian ship, or engaged in India on any other ship, the voyage of which is to terminate in India, dies at any place outside India leaving any money or effects not on board the ship, the Indian consular officer at or near the place shall claim and take charge of such money and other effects (hereinafter referred to as the property of a deceased seaman or apprentice).

#### **156. Dealing with property of deceased seamen.**

(1) An Indian consular officer or a shipping master to whom the effects of a deceased seaman or apprentice are delivered or who takes charge of such effects under this Act may, if he thinks fit, sell the effects, and the proceeds of any such sale shall be deemed to form part of the property of the deceased seaman or apprentice.

(2) Before selling any valuables comprised in the said effects, such officer or shipping master shall endeavour to ascertain the wishes of the next-of-kin of the deceased seaman or apprentice as to the disposal of such valuables and shall, if practicable and lawful, comply with such wishes.

(3) An Indian consular officer to whom any property of a deceased seaman or apprentice is delivered or who takes charge of any such property under this Act shall remit the property to the shipping master at the port of engagement of the deceased seaman or apprentice in such manner and shall render such accounts in respect thereof as may be prescribed.

**157. Recovery of wages, etc., of seamen lost with their ship.**

(1) Where a seaman or apprentice is lost with the ship to which he belongs, the Central Government or such officer as the Central Government may appoint in this behalf may recover the wages and the compensation due to him from the owner, master or agent of the ship in the same court and in the same manner in which seamen's wages are recoverable, and shall deal with those wages in the same manner as with the wages and compensation due to other deceased seamen or apprentices under this Act.

(2) In any proceedings for the recovery of the wages and compensation, if it is shown by some official records or by other evidence that the ship has, twelve months or upwards before the institution of the proceeding, left any port, she shall, unless it is shown that she has been heard of within twelve months after the departure, be deemed to have been lost with all hands on board either immediately after the time she was last heard of or at such later time as the court hearing the case may think probable.

**158. Property of seamen dying in India.**

If a seaman or apprentice dies in India and is at the time of his death entitled to claim from the master or owner of the ship in which he has served any effects or unpaid wages, the master, owner or agent shall pay and deliver or account for such property to the shipping master at the port where the seaman or apprentice was discharged or was to have been discharged or to such other officer as the Central Government may direct.

**159. Payment over of property of deceased seamen by shipping master.**

Where any property of a deceased seaman or apprentice is paid or delivered to a shipping master, the shipping master, after deducting for expenses incurred in respect of that seaman or apprentice or of his property such sums as he thinks proper to allow, may—

- (a) pay and deliver the residue to any claimants who can prove themselves to the satisfaction of the said shipping master to be entitled thereto, and the said shipping master shall be thereby discharged from all further liability in respect of the residue so paid or delivered; or
- (b) if he thinks fit so to do, require probate or letters of administration or a certificate under the Indian Succession Act, 1925, to be taken out, and thereupon pay and deliver the residue to the legal representatives of the deceased.

**160. Disposal of unclaimed property of deceased seamen.**

(1) Where no claim to the property of a deceased seaman or apprentice received by a shipping master is substantiated within one year from the receipt thereof by such shipping master, the shipping master shall cause such property to be sold and pay the proceeds of the sale into the public account of India.

(2) If, after the proceeds of the sale having been so paid, any claim is made thereto, then, if the claim is established to the satisfaction of the shipping master, the amount or so much thereof as shall appear to him to be due to the claimant, shall be paid to him, and if the claim is not so established, the claimant may apply by petition to the High Court, and such Court, after taking evidence either orally or on affidavit, shall make such order on the petition as shall seem just:

Provided that, after the expiration of six years from the receipt of such property by the shipping master, no claim to such property shall be entertained without the sanction of the Central Government.

*Distressed seamen***161. Relief and maintenance of distressed seamen.**

(1) The Indian consular officer at or near the place where a seaman is in distress shall, on application being made to him by the distressed seaman, provide



in accordance with the rules made under this Act for the return of that seaman to a proper return port, and also for the said seaman's necessary clothing and maintenance until his arrival at such port.

(2) A distressed seaman shall not have any right to be maintained or sent to a proper return port except to the extent and on the conditions provided for in the rules.

(3) All repatriation expenses, other than excepted expenses, incurred by or on behalf of the Central Government in accordance with the provisions of this Act shall constitute a debt due to the Central Government for which the owner or agent of the ship to which the seaman in respect of whom they were incurred belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall be liable; and the owner or agent shall not be entitled to recover from the seaman any amount paid by him to the Central Government in settlement or part settlement of such debt.

(4) All excepted expenses incurred by or on behalf of the Central Government in accordance with the provisions of this Act shall constitute a debt due to the Central Government for which the seaman in respect of whom they were incurred and the owner or agent of the ship to which that seaman belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall be jointly and severally liable; and the owner or agent shall be entitled to recover from the seaman any amount paid by him to the Central Government in settlement or part settlement of such debt, and may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman.

(5) All excepted expenses incurred in accordance with the provisions of this Act in respect of any distressed seaman by the owner or agent of the ship to which he belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall constitute a debt due to the owner or agent for which the seaman shall be liable; and the owner or agent may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman: but he shall not be entitled to recover from the seaman any repatriation expenses other than excepted expenses.

(6) In any proceedings for the recovery of any expenses which in terms of sub-s. (3) or sub-s. (4) are a debt due to the Central Government, the production of an account of the expenses and proof of payment thereof by or on behalf of or under the direction of the Central Government shall be prima facie evidence that the expenses were incurred in accordance with the provisions of this Act by or on behalf of the Central Government.

(7) Any debt which may be due to the Central Government under this section may be recovered by any officer authorised by it in writing in this behalf from the person concerned in the same manner as wages are recoverable under S. 145.

## **162. Mode of providing for return of seamen to proper return port.**

(1) A seaman may be sent to a proper return port by any reasonable route either by sea or land or if necessary by air or partly by any one and partly by any other of these modes.

(2) Provision shall be made for the return of the seaman as to the whole of the route if it is by sea or as to any part of the route which is by sea by placing the seaman on board an Indian ship which is in want of men to make up its complement, or, if that is not practicable, by providing the seaman with a passage in any ship, Indian or foreign, or with the money for his passage, and, as to any part of the route which is by land or air, by paying the expenses of his journey and of his maintenance during the journey or providing him with means to pay those expenses.

(3) Where the master of a ship is required under this Part to provide for the return of a discharged seaman to a proper return port, the master may, instead of providing the seaman's passage or the expenses of his journey or of providing the seaman with means to pay his passage or those expenses, deposit with the proper officer such sum as that officer considers sufficient to defray the expenses of the return of the seaman to a proper return port.

### **163. Receiving distressed seamen on ships.**

(1) The master of an Indian ship shall receive on board his ship and afford passage and maintenance to all distressed seamen whom he is required by the Indian consular officer to take on board his ship, and shall during the passage provide every such distressed seaman with accommodation equal to that normally provided for the crew of the ship and subsistence, proper to the rank or rating of the said distressed seaman.

(2) The master of a ship shall not be required to receive on board his ship a distressed seaman in terms of this section, if the Indian consular officer is satisfied that accommodation is not and cannot be made available for such seaman.

### **164. Provisions as to taking distressed seamen on ships.**

(1) Where a distressed seaman is for the purpose of his return to a proper return port placed on board an Indian ship, the Indian consular officer by whom the seaman is so placed shall endorse on the agreement with the crew of the ship particulars of the seaman so placed on board.

(2) On the production of a certificate signed by the Indian consular officer by whose directions any such distressed seamen were received on board, specifying the number and names of the distressed seamen and the time when each of them was received on board, and on a declaration made by the master stating the number of days during which each distressed seaman has received subsistence and stating the full complement of his crew and the actual number of seamen employed on board his ship and every variation in that number, whilst the distressed seamen received maintenance, the master shall be entitled to be paid in respect of the subsistence and passage of every seaman so conveyed and provided for by him, exceeding the number, if any, wanted to make up the complement of his crew, such sum for each day as the Central Government may by rules made in this behalf allow.

### **165. What shall be evidence of distress.**

In any proceeding under this Part a certificate of the Central Government or of such officer as the Central Government may specify in this behalf to the effect that any seaman named therein is distressed shall be conclusive evidence that such seaman is distressed within the meaning of this Act.

### **166. Indian consular officer to decide return port to which or route by which seaman is to be sent.**

If any question arises as to what return port a seaman is to be sent in any case or as to the route by which he should be sent, that question shall be decided by the Indian consular officer concerned, and in deciding any question under this provision, the Indian consular officer shall have regard both to the convenience of the seaman and to the expense involved, and also, where that is the case, to the fact that an Indian ship which is in want of men to make up its complement is about to proceed to a proper return port.

### **167. Power to make rules with respect to distressed seamen.**

The Central Government may make rules with respect to the relief, maintenance and return to a proper return port of seamen found in distress in any place out of India and with respect to the circumstances in which, and the conditions subject to which, seamen may be relieved and provided with

passages under this Part, and generally to carry out the provisions of this Part relating to distressed seamen.

*Provisions, health and accommodation.*

**168. Ships to have sufficient provisions and water.**

(1) All Indian ships and all ships upon which seamen have been engaged shall have on board sufficient provisions and water of good quality and fit for the use of the crew on the scale specified in the agreement with the crew.

(2) If any person making an inspection under S. 176 finds the provisions or water to be of bad quality and unfit for use or deficient in quantity, he shall signify it in writing to the master of the ship and may, if he thinks fit, detain the ship until the defects are remedied to his satisfaction.

(3) The master shall not use any provisions or water so signified to be of bad quality and shall in lieu of such provisions or water, provide other proper provisions or water and he shall, if the provisions or water be signified to be deficient in quantity, procure the requisite quantity of any provisions or water to cover the deficiency.

(4) The person making the inspection shall enter a statement of the result of the inspection in the official log book, and shall, if he is not the shipping master, send a report thereof to the shipping master and that report shall be admissible in evidence in any legal proceeding.

(5) If the inspection was made in pursuance of a request by the members of the crew and the person making the inspection certifies in the statement of the result of the inspection that the complaint was false and either frivolous or vexatious, every member of the crew who made the request shall be liable to forfeit to the owner, out of his wages a sum not exceeding one week's wages.

(6) The master of the ship and any other person having charge of any provisions or water liable to inspection under this section shall give the person making the inspection every reasonable facility for the purpose.

**169. Allowances for short or bad provisions.**

(1) In either of the following cases, that is to say, —

- (a) if during the voyage the allowance of any of the provisions for which a seaman has by his agreement stipulated is reduced, or
- (b) if it is shown that any of those provisions are or have during the voyage been bad in quality or unfit for use,

the seaman shall receive by way of compensation for that reduction or bad quality according to the time of its continuance, sums in accordance with such scale as may be prescribed, to be paid to him in addition to, and to be recoverable as, wages.

(2) If it is shown to the satisfaction of the court before which the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the court shall take those circumstances into consideration in making an order.

**170. Foreign-going Indian ship to carry duly certificated cook.**

(1) With effect from such date as the Central Government may, by notification in the official Gazette, specify, every foreign-going Indian ship of such tonnage as may be prescribed shall be provided with, and shall carry, a cook duly certificated under this Act.

(2) The Central Government may make rules specifying the qualifications, experience or sea service which may be required from persons who wish to obtain certificates of competency as cooks under this Act, and the conditions under which any such certificate may be granted, cancelled or suspended.

**171. Weights and measures on board.**

The master of a ship shall keep on board proper weights and measures for determining the quantities of the several provisions and articles served out and shall allow the same to be used at the time of serving out the provisions and articles in the presence of witnesses whenever any dispute arises about the quantities.

**172. Beddings, towels, medicines, medical stores, etc., to be provided and kept on board certain ships.**

(1) The owner of every ship of over five hundred tons gross shall supply or cause to be supplied to every seaman for his personal use, bedding, towels, mess utensils and other articles according to such scale as may be prescribed; and different scales may be prescribed in respect of different classes of ships.

(2) All foreign-going Indian ships and all home-trade ships of two hundred tons gross or more shall have always on board a sufficient supply of medicines, medical stores, appliances and first aid equipment suitable for diseases and accidents likely to occur on voyages according to such scale as may be prescribed.

(3) It shall be the duty of the port health officer or such other person as the Central Government may appoint in this behalf to inspect the medicines, medical stores and appliances with which a ship is required to be provided.

**173. Certain ships to carry medical officer.**

(1) Every foreign-going ship carrying more than the prescribed number of persons (including the crew), shall have on board as part of her complement a medical officer possessing such qualifications as may be prescribed.

(2) Nothing in this section shall apply to an unberthed passenger ship or a pilgrim ship.

**174. Expenses of medical attendance in case of illness.**

(1) If the master of an Indian ship, or a seaman or apprentice, receives any hurt or injury or suffers from any illness (not being a hurt, injury or illness due to his own wilful act or default or to his own misbehaviour), resulting in his being discharged or left behind at a place other than his proper return port, the expenses of providing the necessary surgical and medical advice, attendance and treatment and medicine, and also the expenses of the maintenance of the master, seaman or apprentice until he is cured, or dies, or is brought back to the port from which he was shipped or other port agreed upon after receiving the necessary medical treatment, and of his conveyance to that port, and in case of death, the expenses, if any, of his burial or cremation shall be defrayed by the owner of the ship without any deduction on that account from his wages.

(2) If the master, seaman or apprentice is on account of any illness or injury temporarily removed from his ship, at a port other than his proper return port, for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expenses of removal and providing the necessary surgical and medical advice, attendance and treatment and medicine and of his maintenance while away from the ship, shall be defrayed in like manner.

(3) The expenses of all medicines, and surgical and medical advice, attendance and treatment, given to a master, seaman or apprentice while on board his ship, shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any master, seaman or apprentice in respect of illness, shall, if proved to the satisfaction of the Indian consular officer or a shipping master, be deducted from the wages of the master, seaman or apprentice.

(5) Where any expenses referred to in this section have been paid by the master, seaman or apprentice himself, the same may be recovered as if they

were wages duly earned, and, if any such expenses are paid by the Government, the amount shall be a charge upon the ship and may be recovered with full costs of suit by the Central Government.

### **175. Accommodation for seaman.**

(1) The Central Government may, subject to the condition of previous publication, make rules with respect to the crew accommodation to be provided in ships of any class specified in the rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the minimum space for each person which must be provided in any ship to which the rules apply by way of sleeping accommodation for seamen and apprentices and the maximum number of persons by whom any specified part of such sleeping accommodation may be used;
- (b) the position in any ship in which the crew accommodation or any part thereof may be located and the standards to be observed in the construction, equipment and furnishing of any such accommodation;
- (c) the submission to such authority as may be specified in this behalf of plans and specifications of any works proposed to be carried out for the provision or alteration of any such accommodation and the authorisation of that authority to inspect any such works;
- (d) the maintenance and repair of any such accommodation and the prohibition or restriction of the use of any such accommodation for purposes other than those for which it is designed;
- (e) the manner as to how ships registered or under construction at the commencement of any rules made under this section may be dealt with after such commencement;

and such rules may make different provisions in respect of different classes of ships and in respect of crew accommodation provided for different classes of persons.

(3) If any person making an inspection under S. 176 finds that the crew accommodation is insanitary or is not in accordance with the provisions of this Act, he shall signify it in writing to the master of the ship and may, if he thinks fit, detain the ship until the defects are remedied to his satisfaction.

*Explanation.*— In this section, the expression “crew accommodation” includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seamen and apprentices, not being accommodation which is also used by, or provided for the use of, passengers.

### **176. Inspection by shipping master, etc., of provisions, water, weights and measures and accommodation.**

A shipping master, surveyor, seamen's welfare officer, port health officer, Indian consular officer or any other officer at any port duly authorised in this behalf by the Central Government—

- (a) in the case of any ship upon which seamen have been shipped at that port, may at any time,
- (b) in the case of any Indian ship, may at any time, and if the master or three or more of the crew so request, shall, enter on board the ship and inspect—
  - (i) the provisions and water,
  - (ii) the weights and measures,
  - (iii) the accommodation for seamen,

with which the ship is required to be provided by or under this Act and also the space and equipment used for the storage and handling of food and water

and the galley and other equipment used for the preparation and service of meals.

**177. Inspection by master of provisions, water and accommodation at sea.**

The master of an Indian ship which is at sea shall, at least once in every ten days, cause an inspection to be made of the provisions and water provided for the use of the seamen and apprentices and the crew accommodation, for the purpose of ascertaining whether the same are being maintained in accordance with the requirements of this Act, and the person making the inspection shall enter a statement of the result of the inspection in a book specially kept for the purpose.

*Special provisions for the protection of seamen in respect of litigation.*

**178. Meaning of serving seaman.**

A seaman shall, for the purposes of these provisions, be deemed to be a serving seaman during any period commencing on the date of the agreement with the crew and ending thirty days after the date on which the seaman is finally discharged from such agreement.

**179. Particulars to be furnished in plaints, etc.**

(1) If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a serving seaman, he shall make a statement accordingly in the plaint, application or appeal.

(2) If any collector has reason to believe that any seaman who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court is unable to appear therein or is a serving seaman, the collector may certify the facts to the Court.

**180. Notice to be given in case of unrepresented seaman.**

(1) If a collector has certified under sub-s. (2) of section 179, or if a Court has reason to believe that a seaman who is a party to any proceeding before the Court, is unable to appear therein or is a serving seaman, the Court shall suspend the proceeding and shall give notice thereof to the shipping master :

Provided that the Court may refrain from suspending the proceeding and giving the notice—

- (a) if the proceeding is one instituted or made by the seaman, alone or conjointly with others, with the object of enforcing a right of pre-emption, or
- (b) if the interests of the seaman in the proceeding are, in the opinion of the Court, either identical with those of any other party thereto and adequately represented by such other party, or merely of a formal nature.

(2) If it appears to the Court before which any proceeding is pending that a seaman though not a party to the proceeding is materially concerned in the outcome of the proceeding and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof to the shipping master.

(3) If on receipt of a notice under sub-s. (1) or sub-s. (2), the shipping master certifies to the Court, that the seaman is a serving seaman, the Court shall thereupon postpone the proceeding in respect of the seaman for such period as it thinks fit :

Provided that if by reason of the continued absence of the seaman the question of any further postponement of the proceeding in respect of the seaman arises, the Court shall in deciding the question have regard to the purposes of the provisions of this Act conferring special protection on seaman in respect of litigation.

(4) If the shipping master either certifies that the seaman is not for the time being a serving seaman or fails within two months from the date of the receipt of the notice under sub-s. (1) or sub-s. (2), as the case may be, to certify that the seaman is a serving seaman, the Court may, if it thinks fit, continue the proceeding.

### **181. Power to set aside decrees and orders passed against serving seaman.**

(1) Where in any proceeding before a Court, a decree or order has been passed against any seaman while he was a serving seaman, the seaman, or if he dies while he is serving seaman, his legal representative, may apply to the said Court to have the decree or order set aside, and if the Court after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the seaman, the Court shall subject to such conditions, if any, as it thinks fit to impose, make an order accordingly, and may, if it appears that any opposite party in the proceeding has failed to comply with the provisions of sub-s. (1) of section 179, award, subject to such conditions as it thinks fit to impose, damages against such opposite party.

(2) The period of limitation for an application under sub-s. (1) shall be sixty days from the date on which the seaman first ceases to be a serving seaman after the passing of the decree or order, or where the summons or notice was not duly served on the seaman in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order whichever is later; and the provisions of section 5 of the Indian Limitation Act, 1908, shall apply to such applications.

(3) Where the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the seaman only, it may be set aside as against all or any of the parties against whom it was made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be, in respect of which the decree or order was passed.

### **182. Modification of law of limitation where seaman is a party.**

In computing the period of limitation provided in the foregoing provisions or in the Indian Limitation Act, 1908, or in any other law for the time being in force, for any suit, appeal or application to a Court to which a seaman is a party, the period or periods during which the seaman has been a serving seaman, and if the seaman has died while he was a serving seaman, the period from the date of his death to the date on which his next-of-kin was first informed, by the shipping master or otherwise, of his death, shall be excluded:

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption except in such areas and in such circumstances as the Central Government may, by notification in the Official Gazette, specify in this behalf.

### **183. Reference in matters of doubt to shipping masters.**

If any Court is in doubt whether, for the purposes of section 180 or section 181, a seaman is or was at any particular time or during any particular period a serving seaman, it may refer the question to the shipping master, and the certificate of the shipping master shall be conclusive evidence on the question.

*Provisions for the protection of seamen in respect of other matters*

### **184. Facilities for making complaints.**

If a seaman or apprentice states to the master that he desires to make a complaint to a Magistrate or other proper officer against the master or any of the crew, the master shall,—

(a) if the ship is then at a place where there is a Magistrate or other proper

officer, as soon after such statement as the service of the ship will permit, and

- (b) if the ship is not then at such place, as soon after her first arrival at such place as the service of the ship will permit, allow the complainant to go ashore or send him ashore under proper protection so that he may be enabled to make the complaint.

### **185. Assignment or sale of salvage invalid.**

Subject to the provisions of this Act, an assignment of salvage payable to a seaman or apprentice made prior to the accruing thereof shall not bind the person making the same, and a power-of-attorney or authority for the receipt of any such salvage shall not be irrevocable.

### **186. No debt recoverable till end of voyage.**

A debt incurred by any seaman after he has engaged to serve shall not be recoverable until the service agreed for is concluded.

### **187. Seamen's property not to be detained.**

(1) Any person who receives or takes into his possession or under his control any money or other property of a seaman or apprentice shall return the same or pay the value thereof when required by the seaman or apprentice subject to deduction of such amounts as may be justly due to him from the seaman or apprentice in respect of board or lodging or otherwise.

(2) Where a Magistrate imposes a fine for a contravention of this section, he may direct the amount of such money or the value of the property subject to such deduction as aforesaid, if any, or the property itself to be forthwith paid or delivered to the seaman or apprentice.

### **188. Prohibition against solicitation by lodging house keepers.**

No person shall, while a ship is at any port or place in India—

- (a) solicit a seaman or apprentice to become a lodger at the house of any person letting lodgings for hire; or  
(b) take out of the ship any property of the seaman or apprentice except under the direction of the seaman or apprentice and with the permission of the master.

### **189. Ship not to be boarded without permission before seamen leave.**

Where a ship has arrived at a port or place in India at the end of a voyage and any person, not being in the service of the Government or not being duly authorised by law for the purpose, goes on board the ship without the permission of the master before the seamen lawfully leave the ship at the end of their engagement or are discharged (whichever happens last), the master of the ship may take such person into custody and deliver him up forthwith to a police officer to be taken before a Magistrate to be dealt with according to the provisions of this Act.

#### *Provisions as to discipline*

### **190. Misconduct endangering life or ship.**

No master, seaman or apprentice belonging to an Indian ship, wherever it may be, or to any other ship, while in India, shall knowingly—

- (a) do anything tending to the immediate loss or destruction of, or serious damage to, the ship, or tending immediately to endanger the life of, or to cause injury to any person belonging to or on board the ship; or  
(b) refuse or omit to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction or serious damage, or for preserving any person belonging to or on board the ship from danger to life or from injury.



**191. Desertion and absence without leave.**

(1) No seaman lawfully engaged and no apprentice—

(a) shall desert his ship; or

(b) shall neglect or refuse, without reasonable cause, to join the ship or to proceed to sea in his ship or be absent without leave at any time within twenty-four hours of the ship's sailing from a port either at the commencement or during the progress of a voyage, or be absent at any time without leave and without sufficient reason from his ship or from his duty.

(2) For the purposes of sub-section (1), the fact that the ship on which the seaman or apprentice is engaged or to which he belongs is unseaworthy shall be deemed to be a reasonable cause :

Provided that the seaman or apprentice has, before failing or refusing to join his ship or to proceed to sea in his ship or before absenting himself or being absent from the ship, as the case may be, complained to the master or a shipping master, surveyor, seamen's welfare officer, port health officer, Indian consular officer or any other officer at any port duly authorised in this behalf by the Central Government, that the ship is unseaworthy.

**192. Power to suspend deserter's certificate of discharge.**

If it is shown to the satisfaction of a proper officer that a seaman has deserted his ship or has absented himself without leave and without sufficient reason from his ship or from his duty, the proper officer shall forthwith make a report to that effect to the Director-General who may thereupon direct that the seaman's certificate of discharge or continuous certificate of discharge shall be withheld for such period as may be specified in the direction.

**193. Conveyance of deserter or imprisoned seaman on board ship.**

(1) If a seaman or apprentice deserts his ship or is absent without leave and without sufficient reason from his ship or from his duty, the master, any mate, the owner or agent of the owner of ship may, without prejudice to any other action that may be taken against the seaman or apprentice under this Act, convey him on board his ship and may for that purpose cause to be used such force as may be reasonable in the circumstances of the case.

(2) If, either at the commencement or during the progress of any voyage, a seaman or apprentice engaged in an Indian ship commits outside India, the offence of desertion or absence without leave or any offence against discipline, the master, any mate, the owner or agent of the owner may, if and so far as the laws in force in the place will permit, arrest him without first procuring a warrant.

(3) No person shall convey on board or arrest a seaman or apprentice on improper or insufficient grounds.

(4) Where a seaman or apprentice is brought before a Court on the ground of desertion or of absence without leave or of any offence against discipline, and the master or the owner, or his agent, so requires, the Court, may, in lieu of committing and sentencing him for the offence, cause him to be conveyed on board his ship for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship or the owner of his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the conveyance

**Section 191 — Note 1**

[1] Certain seamen entering into agreement to sail on British ship for period of twelve months on voyage from Calcutta to any other ports or places within limits of 60 degrees North and 30 degrees South Latitude trading to and fro as nature of service might require

and finally to be discharged at Calcutta—Outbreak of hostilities during 12 months—Refusal by seamen to proceed to sea held not without cause and they could not be convicted under old S. 100 cl. (ii). 1940 Rang 252 (256) (A I R V 27) : 1940 Rang L R 468 : 42 Cri L Jour 194.

to be paid by the offender and, if necessary, to be deducted from any wages which he has then earned or by virtue of his then existing engagements may afterwards be earned.

#### 194. General offences against discipline.

A seaman lawfully engaged or an apprentice shall be guilty of an offence against discipline if he commits any of the following acts, namely :—

- (a) if he quits the ship without leave after her arrival at her port of delivery and before she is placed in security ;
- (b) if he is guilty of wilful disobedience to any lawful command or neglect of duty ;
- (c) if he is guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty ;
- (d) if he assaults the master or any other officer of the ship ;
- (e) if he combines with any of the crew to disobey lawful commands or to neglect duty or to impede the navigation of the ship or retard the progress of the voyage ;
- (f) if he wilfully damages his ship or commits criminal misappropriation or breach of trust in respect of, or wilfully damages any of, her stores or cargo.

#### 195. Smuggling of goods by seamen or apprentices.

(1) If a seaman lawfully engaged or an apprentice is convicted of an offence of smuggling any goods whereby loss or damage is occasioned to the master or owner of the ship, he shall be liable to pay to that master or owner a sum sufficient to re-imburse the loss or damage and the whole or a part of his wages may be retained in satisfaction on account of that liability without prejudice to any other remedy.

(2) If a seaman lawfully engaged is convicted of an offence of smuggling opium, hemp or any other narcotic drug or narcotic, the Director-General may direct that the seaman's certificate of discharge or continuous certificate of discharge shall be cancelled or shall be suspended for such period as may be specified in the direction.

#### 196. Entry of offences in official logs.

If any offence within the meaning of this Act of desertion or absence without leave or against discipline is committed, or if any act of misconduct is committed for which the offender's agreement imposes a fine and it is intended to enforce the fine,—

- (a) an entry of the offence or act shall be made in the official log book and signed by the master, the mate and one of the crew ; and
- (b) the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any port, or, if she is at the time in port, before her departure therefrom, be furnished with a copy of the entry and have the same read over distinctly and audibly to him and may thereupon make such reply thereto as he thinks fit ; and
- (c) a statement of a copy of the entry having been so furnished and the entry having been so read over and the reply, if any, made by the offender shall likewise be entered and signed in manner aforesaid ; and

##### Section 194 — Note 1

[1] Essence of old S. 103 (iv) is assault — Conviction under Calcutta Police Act, S. 68— Trial under Merchant Shipping Act, S. 103 (iv) on same facts is barred. 1927 Cal 224 (225) [AIR V 14] : 28 Cri L Jour 233 (DB).

[2] Section 103 of the Merchant Shipping

Act (which corresponds with S. 194 of the present Act), does not, by virtue of S. 5 (2) (c), apply to a ship which is neither a British ship nor registered in British India. 1949 Cal 319 (319) [AIR V 36 C 103] : I L R (1949) 2 Cal 283 : 50 Cri L Jour 567 (DB).

(d) in any subsequent legal proceedings the entries by this section required shall, if practicable, be produced or proved, and, in default of such production or proof, the Court hearing the case may in its discretion, refuse to receive evidence of the offence or act of misconduct.

### **197. Report of desertions and absences without leave.**

Whenever any seaman engaged outside India on an Indian ship deserts or otherwise absents himself in India without leave, the master of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to the shipping master or to such other officer as the Central Government specifies in this behalf, unless in the meantime, the deserter or absentee returns.

### **198. Entries and certificates of desertion abroad.**

(1) In every case of desertion from an Indian ship whilst such ship is at any place out of India, the master shall produce the entry of desertion in the official log book to the Indian consular officer at the place, and that officer shall thereupon, make and certify a copy of the entry.

(2) The master shall forthwith transmit such copy to the shipping master at the port at which the seaman or apprentice was shipped, and the shipping master shall, if required, cause the same to be produced in any legal proceeding.

(3) Such copy, if purporting to be so made and certified as aforesaid, shall, in any legal proceeding relating to such desertion, be admissible in evidence.

### **199. Facilities for proving desertion in proceedings for forfeiture of wages.**

(1) Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion from a ship, it shall be sufficient for the person insisting on the forfeiture to show that the seaman or apprentice was duly engaged in or belonged to the ship, and either that he left the ship before the completion of the voyage or engagement or, if the voyage was to terminate in India and the ship has not returned, that he is absent from her and that an entry of his desertion has been duly made in the official log book.

(2) The desertion shall thereupon, so far as relates to any forfeiture of wages under this Part, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the court that he had sufficient reasons for leaving his ship.

### **200. Application of forfeitures.**

(1) Where any wages or other property are under this Act forfeited for desertion from a ship, they shall be applied towards reimbursing the expenses caused by the desertion to the master or the owner of the ship, and subject to that reimbursement, shall be paid to the Central Government.

(2) For the purposes of such reimbursement the master or the owner or his agent may, if the wages are earned subsequent to the desertion, recover them in the same manner as the deserter could have recovered them if not forfeited; and the court in any legal proceeding relating to such wages may order them to be paid accordingly.

### **201. Decision of questions of forfeiture and deduction in suits for wages.**

Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

**202. Payment of fines imposed under agreement to shipping master.**

(1) Every fine imposed on a seaman for any act of misconduct under his agreement shall be deducted and paid over as follows, namely:—

(a) if the offender is discharged at any port or place in India and the offence and such entries in respect thereof as aforesaid are proved to the satisfaction of the shipping master before whom the offender is discharged, the master or owner shall deduct such fine from the wages of the offender and pay the same over to such shipping master; and

(b) if the seaman is discharged at any port or place outside India and the offence and such entries as aforesaid are proved to the satisfaction of the Indian consular officer, by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log book, if any, and signed by such officer and on the return of the ship to India, the master or owner shall pay over such fine to the shipping master before whom the crew is discharged.

(2) An act of misconduct for which any such fine has been inflicted and paid shall not be otherwise punishable under the provisions of this Act.

(3) The proceeds of all fines received by a shipping master under this section shall be utilised for the welfare of seamen in such manner as the Central Government may direct.

**203. Seaman or apprentice not to be enticed to desert.**

No person shall by any means whatever persuade or attempt to persuade a seaman or apprentice to neglect or refuse to join or proceed to sea in or desert from his ship, or otherwise to absent himself from his duty.

**204. Deserters not to be harboured.**

No person shall harbour or secrete a seaman or apprentice who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe the seaman or apprentice to have so done.

**205. Stowaways and seamen carried under compulsion.**

(1) No person shall secrete himself and go to sea in a ship without the consent of either the owner, agent or master or of a mate, or of the person in charge of the ship or of any other person entitled to give that consent.

(2) Every seafaring person whom the master of a ship is under the authority of this Act or any other law compelled to take on board and convey and every person who goes to sea in a ship without such consent as aforesaid, shall so long as he remains in the ship, be subject to the same laws and regulations for preserving discipline and to the same fines and punishments for offences constituting or tending to a breach of discipline as if he were a member of, and has signed the agreement with, the crew.

(3) The master of any Indian ship arriving at any port or place in or outside India and the master of any ship other than an Indian ship arriving at any port or place in India shall, if any person has gone to sea on that ship without the consent referred to in sub-section (1), report the fact in writing to the proper officer as soon as may be after the arrival of the ship.

**206. Procedure where seaman not shipped in India is imprisoned on complaint of master or owner.**

If any seaman engaged outside India is imprisoned on complaint made by or on behalf of the master or owner of the ship or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, then —

(a) while such imprisonment lasts no person shall without the previous sanction in writing of the Central Government or of such officer as it

may specify in this behalf, engage in India any person to serve as a substitute for such seaman on board the ship; and

(b) the Central Government or such officer as it may specify in this behalf may tender such seaman to the master or owner of the ship in which he is engaged to serve, and if such master or owner, without assigning reasons satisfactory to the Central Government or to such officer as aforesaid, refuses to receive him on board may require such master or owner to deposit in the local shipping office—

(i) the wages due to such seaman and his money and other property; and

(ii) such sum as may, in the opinion of the Central Government or such officer as aforesaid, be sufficient to defray the cost of the passage of such seaman to the port at which he was shipped according to the scale of costs usual in the case of distressed seamen.

## **207. Power to send on board seaman not shipped in India who is undergoing imprisonment.**

If any seaman engaged outside India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding three months, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any magistrate may, at the request of the master or owner or his agent, cause the seaman to be conveyed on board the ship for the purpose of proceeding on the voyage or to be delivered to the master or any mate of the ship or to the owner or his agent to be by them so conveyed, notwithstanding that the period for which he was sentenced to imprisonment has not terminated.

## **208. On change of master, documents to be handed over to successor.**

(1) If during the progress of a voyage the master of any Indian ship is removed or superseded or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and the crew thereof which are in his custody.

(2) Such successor shall immediately on assuming the command of the ship enter in the official log book a list of the documents so delivered to him.

## **209. Transmission of documents on transfer of seaman from one ship to another.**

Where a seaman is transferred under his agreement from one ship to another, the master of the ship from which the seaman is transferred shall as soon as practicable, transmit to the master of the other ship all documents in his possession relating to the seaman.

## **210. Leaving behind in India of seaman or apprentice engaged abroad.**

(1) The master of a ship shall not discharge at any place in India a seaman or apprentice engaged outside India unless he previously obtains the sanction in writing of such officer as the Central Government appoints in this behalf; but such sanction shall not be refused when the seaman or apprentice is discharged on the termination of his service.

(2) Subject to the provisions contained in sub-section (1), the sanction under that sub-section shall be given or withheld at the discretion of the officer so appointed, but whenever it is withheld, the reasons for so withholding it shall be recorded by him.

## **211. Deserters from foreign ships.**

(1) Where it appears to the Central Government that due facilities are or will be given by the Government of any country outside India for recovering

and apprehending seamen who desert from Indian ships in that country, the Central Government may, by notification in the Official Gazette, stating that such facilities are or will be given, declare that this section shall apply to seamen belonging to ships of such country, subject to such limitations or conditions as may be specified in the notification.

(2) Where this section applies to seamen belonging to ships of any country and a seaman deserts from any such ship, when within India, any court that would have had cognizance of the matter if the seaman or apprentice had deserted from an Indian ship shall, on the application of a consular officer of that country, aid in apprehending the deserter and for that purpose may, on information given on oath, issue a warrant for his apprehension and on proof of the desertion order him to be conveyed on board his ship or delivered to the master or mate of his ship or to the owner of the ship or his agent to be so conveyed and any such warrant or order may be executed accordingly.

#### *Official logs*

### **212. Official logs to be kept and to be dated.**

(1) An official log shall be kept in the prescribed form in every Indian ship except a home-trade ship of less than two hundred tons gross.

(2) The official log may, at the discretion of the master or owner, be kept distinct from or united with the ordinary ship's log so that in all cases the spaces in the official log book be duly filled up.

### **213. Entries in official log books how and when to be made.**

(1) An entry required by this Act in the official log book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as that occurrence, shall be made and dated so as to show the date of the occurrence and of the entry respecting it and if made in respect of an occurrence happening before the arrival of the ship at her final port of discharge, shall not be made more than twenty-four hours after that arrival.

(2) Save as otherwise provided in this Act, every entry in the official log book shall be signed by the master and by the mate or some other member of the crew and also—

- (a) if it is an entry of injury or death, shall be signed by the medical officer on board, if any; and
- (b) if it is an entry of wages due to or the property of a seaman or apprentice who dies, shall be signed by the mate and by some member of the crew besides the master.

(3) Every entry made in an official log book in the manner provided by this Act shall be admissible in evidence.

### **214. Entries required to be made in official log books.**

(1) The master of a ship for which an official log is required shall enter or cause to be entered in the official log book the following matters namely:—

- (a) every conviction by a legal tribunal of a member of his crew and the punishment inflicted;
- (b) every offence committed by a member of his crew for which it is intended to prosecute or to enforce a forfeiture or exact a fine, together with such statement concerning the reading over of that entry and concerning the reply (if any) made to the charge as is by this Act required;
- (c) every offence for which punishment is inflicted on board and the punishment inflicted;
- (d) a report on the quality of work of each member of his crew, or a statement that the master declines to give an opinion thereon with a statement of his reasons for so declining;

- (e) every case of illness, hurt or injury happening to a member of the crew with the nature thereof and the medical treatment adopted (if any);
- (f) every case of death happening on board and the cause thereof, together with such particulars as may be prescribed;
- (g) every birth happening on board, with the sex of the infant, the names of parents and such other particulars as may be prescribed;
- (h) every marriage taking place on board with the names and ages of the parties;
- (i) the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof;
- (j) the wages due to any seaman or apprentice who dies during the voyage and the gross amount of all deductions to be made therefrom;
- (k) the money or other property taken over of any seaman or apprentice who dies during the voyage;
- (l) any other matter which is to be or may be prescribed for entry in the official log.

(2) The master of every such ship, upon its arrival at any port in India or at such other time and place as the Central Government may with respect to any ship or class of ships direct, shall deliver or transmit, in such form as the Director-General may specify, a return of the facts recorded by him in respect of the birth of a child, or the death of a person on board the ship to the Director-General.

(3) (a) The Director-General shall send a certified copy of such of the returns received by him under sub-section (2) as relate to citizens of India, to such officer as may be specified in this behalf by the Central Government; and such officer shall cause the same to be preserved in such manner as may be specified in this behalf by the Central Government.

(b) Every such copy shall be deemed to be a certified copy of the entry with respect to the person concerned, registered under any law in force for the time being relating to the registration of births and deaths.

## **215. Offences in respect of official logs.**

(1) An official log book shall be kept in the manner required by this Act, and an entry directed by this Act to be made therein shall be made at the time and in the manner directed by this Act.

(2) No person shall make or procure to be made or assist in making any entry in any official log book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after such arrival.

## **216. Delivery of official logs to shipping masters.**

The master of every ship for which an official log book is required to be kept under this Act shall, within forty-eight hours after the ship's arrival at her final port of destination in India or upon the discharge of the crew, whichever first happens, deliver the official log book of the voyage to the shipping master before whom the crew is discharged.

## **217. Official logs to be sent to shipping master in case of transfer of ship or loss.**

(1) If for any reason the official log ceases to be required in respect of an Indian ship, the master or owner of the ship shall, if the ship is then in India within one month, and if she is elsewhere within six months, after the cessation, deliver or transmit to the shipping master at the port to which the ship belonged the official log book duly completed up to the time of cessation.

(2) If a ship is lost or abandoned, the master or owner thereof shall, if practicable and as soon as possible, deliver or transmit to the shipping master at her port of registry the official log book, duly completed up to the time of the loss or abandonment.

*National Welfare Board for Seafarers*

**218. Functions of National Welfare Board for Seafarers.**

(1) The Central Government may, by notification in the Official Gazette, constitute an advisory board to be called the National Welfare Board for Seafarers (hereinafter referred to as the Board) for the purpose of advising the Central Government on the measures to be taken for promoting the welfare of seamen (whether ashore or on board ship) generally and in particular the following:—

- (a) the establishment of hostels or boarding and lodging houses for seamen;
- (b) the establishment of clubs, canteens, libraries and other like amenities for the benefit of seamen;
- (c) the establishment of hospitals for seamen or the provision of medical treatment for seamen;
- (d) the provision of educational and other facilities for seamen.

(2) The Central Government may make rules providing for—

- (a) the composition of the Board and the term of office of members thereof;
- (b) the procedure to be followed in the conduct of business by the Board;
- (c) the travelling and other allowances payable to members of the Board;
- (d) the levy of fees payable by owners of ships at such rates as may be prescribed (which may be at different rates for different classes of ships) for the purpose of providing amenities to seamen and for taking other measures for the welfare of seamen;
- (e) the procedure by which any such fees may be collected or recovered and the manner in which the proceeds of such fees, after deduction of the cost of collection, shall be utilised for the purpose specified in clause (d).

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**PART VIII**

**PASSENGER SHIPS**

*Survey of passenger ships*

**219. Application of Part.**

This Part applies only to sea-going passenger ships fitted with mechanical means of propulsion, but the provisions of this Part relating to unberthed passenger ships shall not apply—

- (a) to any such ship not carrying more than thirty unberthed passengers; or
- (b) to any such ship not intended to carry unberthed passengers to or from any port or place in India.

**220. No ship to carry passengers without a certificate of survey.**

(1) No ship shall carry more than twelve passengers between ports or places in India or to or from any port or place in India from or to any port or place outside India, unless she has a certificate of survey under this Part in force and applicable to the voyage on which she is about to proceed or the service on which she is about to be employed:

Provided that nothing in this section shall apply to any ship which has been granted a certificate under section 235, unless it appears from the certificate that it is inapplicable to the voyage on which the ship is about to proceed or the service on which she is about to be employed, or unless there is reason to



believe that the ship has, since the grant of the certificate, sustained injury or damage or been found unseaworthy or otherwise inefficient.

(2) No customs collector shall grant a port clearance, nor shall any pilot be assigned, to any ship for which a certificate of survey is required by this Part until after the production by the owner, agent or master thereof of a certificate under this Part in force and applicable to the voyage on which she is about to proceed or the service on which she is about to be employed.

(3) If any ship for which a certificate of survey is required by this Part, leaves or attempts to leave any port of survey without a certificate, any customs collector or any pilot on board the ship may detain her until she obtains a certificate.

## **221. Power of surveyor.**

(1) The owner or agent of every passenger ship for which a certificate of survey is required under this Part shall cause it to be surveyed in the prescribed manner.

(2) For the purposes of a survey under this Part, a surveyor may, at any reasonable time, go on board a ship, and may inspect the ship and any part thereof, and the machinery, equipment or articles on board thereof :

Provided that he does not unnecessarily hinder the loading or unloading of the ship, or unnecessarily detain or delay her from proceeding on any voyage.

(3) The owner, agent, master and every officer of the ship shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the ship and her machinery and equipment, or any part thereof, respectively, as the surveyor reasonably requires.

## **222. Fees in respect of survey.**

Before a survey under this Part is commenced, the owner, agent or master of the ship to be surveyed shall pay to such officer as the Central Government may appoint in this behalf—

(a) a fee calculated on the tonnage of the ship according to the prescribed rates;

(1) when the survey is to be made in any port of survey other than Bombay, Calcutta or Madras, such additional fee, in respect of the expense (if any) of the journey of the surveyor to the port as the Central Government may by order direct.

## **223. Declaration of survey.**

When a survey under this Part is completed, the surveyor making it shall forthwith, if satisfied that he can with propriety do so, deliver to the owner, agent or master of the ship surveyed a declaration of survey in the prescribed form containing the following particulars, namely:

(a) that the hull and machinery of the ship are sufficient for the service intended and in good condition;

(b) that the equipment of the ship is in such condition and that the certificates of the master, mates, engineers or engine-drivers and of the radio telegraphy operators, are such, as are required by this Act or any other law for the time being in force and applicable to the ship;

(c) the time (if less than one year) for which the hull, machinery and equipment of the ship will be sufficient;

(d) the voyages or class of voyages on which, as regards construction, machinery and equipment, the ship is in the surveyor's opinion fit to ply;

(e) the number of passengers which the ship is, in the opinion of the surveyor, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different

parts of the deck and cabins; the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances as the case requires; and

(f) any other prescribed particulars.

## **224. Sending of declaration by owner, agent or master to Central Government.**

(1) The owner, agent or master to whom a declaration of survey is given shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Central Government may appoint in this behalf.

(2) If the owner, agent or master fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed and shall pay any sum so forfeited on the delivery of the certificate of survey.

## **225. Grant of certificate of survey by Central Government.**

(1) Upon receipt of a declaration of survey, the Central Government shall, if satisfied that the provisions of this Part have been complied with, cause a certificate, in duplicate, to be prepared and delivered, through such officer at the port at which the ship was surveyed as the Central Government may appoint in this behalf, to the owner, agent or master of the ship surveyed, on his applying and paying the sums (if any) mentioned in section 224 as payable on the delivery of a certificate.

(2) A Certificate granted under this section shall be in the prescribed form; shall contain a statement to the effect that the provisions of this Part with respect to the survey of the ship and the transmission of the declaration of survey in respect thereof have been complied with; and shall also set forth—

(a) the particulars concerning the ship which clauses (c), (d) and (e) of section 223 require the declaration of survey to contain; and

(b) any other prescribed particulars.

## **226. Power of Central Government to order a second survey.**

(1) If a surveyor making a survey under this Part refuses to give a declaration of survey under section 223 with regard to any ship or gives a declaration with which the owner or agent or master of the ship surveyed is dissatisfied, the Central Government may, on the application of the owner, agent or master, and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Central Government may require, direct any other surveyor to survey the ship.

(2) The surveyor so directed shall forthwith survey the ship, and may, after the survey, either refuse to give a declaration or give such declaration as under the circumstances seems to him proper, and his decision shall, save as otherwise provided in this Act, be final.

## **227. Duration of certificates of survey.**

(1) A certificate of survey granted under this Part shall not be in force—

(a) after the expiration of one year from the date of issue; or

(b) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipment have been stated in the certificate to be sufficient; or

(c) after notice has been given by the Central Government to the owner, agent or master of the ship to which the certificate relates that the Central Government has cancelled or suspended it.

(2) If a passenger ship is absent from India at the time when her certificate expires, the provisions of this Part relating to certificate of survey shall not be deemed to be contravened unless she first begins to ply with passengers after her next return to India.

**228. Cancellation or suspension of certificate of survey by Central Government.**

(1) Any certificate of survey granted under this Part may be cancelled or suspended by the Central Government if it has reason to believe—

- (a) that the declaration by the surveyor of the sufficiency of the hull, boilers, engines or any of the equipment of the ship has been fraudulently or erroneously made; or
- (b) that the certificate has otherwise been issued upon false or erroneous information.

(2) Before any certificate of survey is cancelled or suspended under sub-section (1), the holder of the certificate shall be given a reasonable opportunity of showing cause why the certificate should not be cancelled or suspended, as the case may be :

Provided that this sub-section shall not apply where the Central Government is satisfied that for some reason to be recorded in writing it is not reasonably practicable to give to the holder of the certificate an opportunity of showing cause.

**229. Alterations in ships subsequent to grant of certificate of survey, and additional surveys.**

(1) The owner, agent or master of a ship in respect of which a certificate of survey granted under this Part is in force, shall, as soon as possible after any alteration is made in the ship's hull, equipment or machinery which affects the efficiency thereof or the seaworthiness of the ship, give written notice to such person as the Central Government may direct containing full particulars of the alteration.

(2) If the Central Government has reason to believe that since the making of the last declaration of survey in respect of a ship—

- (a) any such alteration as aforesaid has been made in the hull, equipment or machinery of the ship; or
- (b) the hull, equipment or machinery of the ship have sustained any injury or are otherwise insufficient ;

the Central Government may require the ship to be again surveyed to such extent as it may think fit, and, if such requirement is not complied with, may cancel any certificate of survey issued under this Part in respect of the said ship.

**230. Power to require delivery of expired or cancelled certificate of survey.**

Every certificate of survey granted under this Part which has expired, or has been cancelled or suspended, shall be delivered to such person as the Central Government may direct.

**231. Certificate of survey to be affixed in conspicuous part of ship.**

The owner or master of every ship for which a certificate of survey has been granted under this Part shall forthwith, on the receipt of the certificate cause one of the duplicates thereof to be affixed, and kept affixed so long as the certificate remains in force and the ship is in use on some conspicuous part of the ship where it may be easily read by all persons on board thereof.

**232. Ship not to carry passengers in contravention of Act.**

(1) No ship on any voyage shall carry or attempt to carry passengers in contravention of section 220 or shall have on board or in any part thereof a number of passengers which is greater than the number set forth in the certificate of survey as the number of passengers which the ship or the part thereof is fit to carry on that voyage.

(2) If the master or any other officer of any ship which carries or attempts to carry passengers in contravention of section 220 is a licensed pilot, he shall be liable to have his licence as a pilot cancelled or suspended for such period as the Central Government may, by order, specify.

*Keeping order in passenger ships.*

**233. Offences in connection with passenger ships.**

(1) If, in the case of a ship for which a certificate of survey has been granted under this Part,—

- (a) any person being drunk or disorderly has been on that account refused admission thereto by the owner or any person in his employ and, after having the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the ship ;
- (b) any person being drunk or disorderly on board the ship is requested by the owner or any person in his employ to leave the ship at any place in India at which he can conveniently do so, and after having the amount of his fare (if he has paid it) returned or tendered to him, does not comply with the request;
- (c) any person on board the ship after warning by the master or other officer thereof, molests or continues to molest any passenger ;
- (d) any person having gone on board the ship at any place and being requested, on account of the ship being full, by the owner or any person in his employ to leave the ship, before it has departed from that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, does not comply with that request ;
- (e) any person travels or attempts to travel in the ship without first paying his fare and with intent to avoid payment thereof ;
- (f) any person on arriving in the ship at the place for which he has paid his fare knowingly and wilfully refuses or neglects to quit the ship ;
- (g) any person on board the ship fails when requested by the master or other officer thereof either to pay his fare or to exhibit such ticket or other receipt, if any, showing the payment of his fare as is usually given to persons travelling by and paying fare for the ship ;

he shall be guilty of an offence under this sub-section.

(2) No person on board any such ship shall wilfully do or cause to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship or to obstruct, impede or molest the crew or any of them in the navigation or management of the ship or otherwise in the execution of their duty on or about the ship.

(3) The master or other officer of any such ship and all persons called by him to his assistance may, without warrant, detain any person who commits any offence under this section and whose name and address are unknown to the master or officer and convey the offender with all convenient despatch before the nearest Magistrate to be dealt with according to law.

**234. Power to exclude drunken passengers from passenger ships.**

The master of any passenger ship may refuse to receive on board thereof any person who by reason of drunkenness or otherwise is in such a state or misconducts himself in such a manner as to cause annoyance or injury to passengers on board, and if any such person is on board, may put him on shore at any convenient place; and a person so refused admittance or put on shore shall not be entitled to the return of any fare he has paid.

### **235. Ships with certificates of survey or certificates of partial survey granted outside India.**

(1) When a ship requires to be furnished with a certificate of survey under this Part and the Central Government is satisfied—

- (a) by the production of a certificate of survey that the ship has been officially surveyed at a port in a country outside India;
- (b) that the requirements of this Act are proved by that survey to have been substantially complied with; and
- (c) that certificates of survey granted under this Part are accepted in such country in lieu of the corresponding certificates required under the laws in force in that country;

the Central Government may, if it thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Part.

(2) When the Central Government has, by notification in the Official Gazette, declared that it is satisfied that an official survey at a port in a country outside India specified in the declaration is such as to prove that the requirements of this Act have been substantially complied with, any person authorised by the Central Government in this behalf may exercise the power to dispense with a survey and to give a certificate conferred on the Central Government by sub-section (1) in the case of any ship furnished with a valid certificate of survey granted at such port.

(3) The provisions of sub-section (1) shall be applicable in the case of ships furnished with valid certificates of partial survey including docking certificates, as if they were ships furnished with like certificates granted at ports in countries outside India subject to the modification that the powers of the Central Government under the said sub-section may be exercised by any person authorised by the Central Government in this behalf.

### **236. Power to make rules as to surveys.**

(1) The Central Government may, subject to the condition of previous publication, make rules to regulate the making of surveys under this Part and the provisions to be made for the safety of life at sea.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the times and places at which, and the manner in which, surveys are to be made;
- (b) the requirements as to construction, machinery, equipment and marking of sub-division load lines, which are to be fulfilled by ships generally or by any class of ships in particular before a declaration of survey may be granted;
- (c) survey of ships by two or more surveyors;
- (d) the duties of the surveyor making a survey and, where two or more surveyors are employed, the respective duties of each of the surveyors employed;
- (e) the form in which declarations of survey and certificates of survey under this Part are to be made and the nature of the particulars to be stated therein respectively;
- (f) the rates according to which the fees payable in respect of surveys are to be calculated in the case of all or any of the ports of survey;
- (g) the closing of, and keeping closed, the openings in ships' hulls and in water-tight bulk-heads;

- (h) the securing of, and keeping in place and the inspection of contrivances for closing any such openings as aforesaid;
- (i) the operation of mechanisms of contrivances for closing any such openings as aforesaid and the drills in connection with the operation thereof; and
- (j) the entries to be made in the official log book or other record to be kept of any of the matters aforesaid.

*Unberthed passenger ships and pilgrim ships.*

**237. Ports or places where unberthed passengers or pilgrims may embark or be discharged.**

(1) Neither an unberthed passenger ship nor a pilgrim ship shall depart or proceed from or discharge unberthed passengers or pilgrims, as the case may be, at any port or place within India other than a port or place appointed in this behalf by the Central Government for unberthed passenger ships or pilgrim ships, as the case may be.

(2) After a ship has departed or proceeded on a voyage from a port or place so appointed, a person shall not be received on board as an unberthed passenger or pilgrim, as the case may be, except at some other port or place so appointed.

**238. Notice to be given of day of sailing.**

(1) The master, owner or agent of an unberthed passenger ship or a pilgrim ship so departing or proceeding shall give notice to an officer appointed in this behalf by the Central Government that the ship is to carry unberthed passengers or pilgrims and of her destination and of the proposed time of sailing.

(2) The notice shall be given—

- (a) in the case of an unberthed passenger ship, not less than twenty-four hours before that time;
- (b) in the case of a pilgrim ship at the original port of departure, if in India, and in any other case at the first port at which she touches in India, not less than three days, and at all other ports not less than twenty-four hours, before that time.

**239. Power to enter on and inspect ship.**

After receiving the notice under S. 238 the officer appointed under that section or a person authorised by him in this behalf shall be at liberty at all times to enter on the ship and inspect her and her fittings and the provisions and stores on board.

**240. Ship not to sail without certificates A and B.**

(1) A ship intended to carry unberthed passengers or pilgrims shall not commence a voyage from the port or place appointed under sub-s. (1) of S. 237, unless the master holds two certificates to the effect mentioned in Ss. 241 and 242.

(2) The customs collector whose duty it is to grant a port clearance for the ship shall not grant it unless the master holds the aforesaid certificates.

**241. Contents of certificate A.**

(1) The first of the certificates (hereinafter called certificate A) shall state that the ship is seaworthy and properly equipped, fitted and ventilated and—

- (a) in the case of an unberthed passenger ship, the number of passengers which she is capable of carrying;
- (b) in the case of a pilgrim ship, the number of pilgrims of each class which she is capable of carrying.

(2) Certificate shall be in the prescribed form and shall be in force for a period of one year from the date of issue or for such shorter period as may be specified therein and it shall be issued in duplicate.

(3) Where the master of a ship produces to the certifying officer a certificate of survey granted under this Part or a safety certificate granted under Part IX in respect of the ship in force and applicable to the voyage on which the ship is about to be employed, the certifying officer may, if the particulars required by sub-section (1) are certified thereby accept the certificate of survey or safety certificate in lieu of certificate A; and such certificate shall then be deemed to be a certificate A for the purposes of this Part in respect of that voyage.

## **242. Contents of certificate B.**

The second of the certificates (hereinafter called certificate B) shall be in the prescribed form and shall state—

- (a) the voyage which the ship is to make, and the intermediate ports (if any) at which she is to touch;
- (b) that she has the proper complement of officers and seamen;
- (c) that the master holds a certificate of survey or a safety certificate or certificate A;
- (d) that she has on board such number of medical officers licensed in the prescribed manner and such number of attendants, if any, as may be prescribed;
- (e) that food, fuel and pure water over and above what is necessary for the crew, and the other things (if any) prescribed for unberthed passenger ships or pilgrim ships, have been placed on board, of the quality prescribed, properly packed, and sufficient to supply the unberthed passengers or pilgrims on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the prescribed scale;
- (f) in the case of an unberthed passenger ship, if the ship is to make a voyage in a season of foul weather specified as such in the rules made under section 262, and to carry upper-deck passengers, that she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather;
- (g) in the case of an unberthed passenger ship, the number of cabin and unberthed passengers embarked at the port of embarkation;
- (h) such other particulars, if any, as may be prescribed for unberthed passenger ships or pilgrim ships, as the case may be.

## **243. Officers entitled to grant certificates.**

The person by whom certificate A and certificate B are to be granted shall be the officer appointed under section 238 who is hereinafter referred to as the certifying officer.

## **244. Survey of ship.**

After receiving the notice required by S. 238, the certifying officer may, if he thinks fit, cause the ship to be surveyed at the expense of the master or owner by a surveyor, who shall report to him whether the ship is, in his opinion, seaworthy and properly equipped, fitted and ventilated for the service on which she is to be employed:

Provided that he shall not cause a ship holding a certificate of survey or a safety certificate to be surveyed unless, by reason of the ship having met with damage or having undergone alterations, or on other reasonable grounds, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for the service on which she is to be employed.

## **245. Discretion as to grant of certificate B.**

(1) The certifying officer shall not grant a certificate B if he has reason to believe that the weather conditions are likely to be adverse or that the ship has

on board any cargo likely from its quality, quantity or mode of stowage to prejudice the health or safety of the unberthed passengers or pilgrims.

(2) Save as aforesaid and subject to the provisions of sub-section (3), it shall be in the discretion of the certifying officer to grant or withhold the certificate, and when he withholds the certificate, the reasons for so doing shall be communicated to the person concerned.

(3) In the exercise of that discretion that officer shall be subject to the control of the Central Government or of such authority as the Central Government may appoint in this behalf.

#### **246. Copy of certificate A to be exhibited.**

The master or owner shall post up in a conspicuous part of the ship, so as to be visible to the persons on board thereof, a copy of certificate A granted under this Part in respect of the ship and shall keep that copy so posted up as long as it is in force.

#### **247. Unberthed passengers or pilgrims to be supplied with prescribed provisions.**

(1) The master of an unberthed passenger ship or any contractor employed by him for the purpose shall not, without reasonable excuse, the burden of proving which shall lie upon him, omit to supply to any unberthed passenger the prescribed allowance of food, fuel and water, and the master of a pilgrim ship, or any contractor employed by him for the purpose shall not, without reasonable excuse, the burden of proving which shall lie upon him, omit to supply to any pilgrim the prescribed allowances of food and of water as required by the provisions of this Part.

(2) Where, under the terms of the ticket issued to an unberthed passenger, he is not entitled to the supply of food by the master or owner or agent of the ship, sub-section (1) shall, in the case of such passenger, have effect as if the reference to "food" in that sub-section were omitted.

#### **248. Number of passengers on board not to exceed that allowed by or under this Part.**

(1) An unberthed passenger ship or a pilgrim ship shall not carry a number of unberthed passengers or pilgrims, which is greater than the number allowed for the ship by or under this Part.

(2) Any officer authorised in this behalf by the Central Government may cause all unberthed passengers or pilgrims over and above the number allowed by or under this Part to disembark, and may forward them to any port at which they may have contracted to land, and recover the cost of so forwarding them from the master, owner or agent of the ship as if the cost were a fine imposed under this Part, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

#### **249. Unberthed passenger or pilgrim not to be landed at a place other than that at which he has contracted to land.**

No master, owner or agent of an unberthed passenger ship or a pilgrim ship shall land any unberthed passenger or pilgrim at any port or place other than the port or place at which the unberthed passenger or pilgrim may have contracted to land, unless with his previous consent, or unless the landing is made necessary by perils of the sea or other unavoidable accident.

#### **250. Forwarding of passengers by Indian consular officers.**

(1) If any unberthed passenger from a ship which is on a voyage from any port or place in India finds himself without any neglect or default of his own at any port or place outside India other than the port or place for which the ship was originally bound or at which he has contracted that he should land,



the Indian consular officer at or near that port or place may forward the passenger to his intended destination, unless the master, owner or agent of the ship within forty-eight hours of the arrival of the passenger gives to that officer a written undertaking to forward the passenger within six weeks thereafter to his original destination and forwards him accordingly within that period.

(2) A passenger so forwarded by or by the authority of an Indian consular officer shall not be entitled to the return of his passage money or to any compensation for loss of passage.

## **251. Recovery of expenses incurred in forwarding passengers.**

(1) All expenses incurred under section 250 by an Indian consular officer in respect of the forwarding of a passenger to his destination including the cost of maintaining the passenger until forwarded to his destination shall be a debt due to the Central Government jointly and severally from the owner, charterer, agent and master of the ship on board which the passenger had embarked.

(2) In any proceeding for the recovery of that debt a certificate purporting to be under the hand of the Indian consular officer and stating the circumstances of the case and the total amount of the expenses shall be prima facie evidence of the amount of the expenses and of the fact that the same were duly incurred.

## **252. Ship not to make voyage in contravention of contract.**

The master, owner or agent of an unberthed passenger ship or a pilgrim ship shall not, otherwise than by reason of perils of the sea or other unavoidable accident, allow the ship to touch at any port or place in contravention of any express or implied contract or engagement with the unberthed passengers or pilgrims with respect to the voyage which the ship was to make and the time which that voyage was to occupy, whether the contract or engagement was made by public advertisement or otherwise.

## **253. Information to be sent to ports of embarkation and discharge.**

(1) The officer appointed by the Central Government in this behalf at any port or place within India at which an unberthed passenger ship or a pilgrim ship touches or arrives, shall send any particulars which he may deem important respecting the unberthed passenger ship or pilgrim ship, and the unberthed passengers or pilgrims carried therein, to the officer at the port or place from which the ship commenced her voyage, and to the officer at any other port or place within India where the unberthed passengers or pilgrims or any of them embarked or are to be discharged.

(2) The officer aforesaid may go on board any ship referred to in sub-section (1) and inspect her in order to ascertain whether the provisions of this Act as to the number of unberthed passengers or pilgrims and other matters have been complied with.

## **254. Reports etc., under Section 253 to be admissible in evidence.**

In any proceeding for the adjudication of any penalty incurred under this Part, any document purporting to be a report of such particulars as are referred to in sub-section (1) of section 253, or a copy of the proceedings of any Court of justice duly authenticated, and also any like document purporting to be made and signed by an Indian consular officer shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Part is held.

### *Special provisions relating to unberthed passenger ships.*

## **255. Destination of ship, time of sailing, etc., to be advertised.**

(1) The master, owner or agent of an unberthed passenger ship departing or proceeding from any port or place in India appointed in this behalf by the

Central Government under sub-section (1) of section 237 shall issue at such port or place in the prescribed manner an advertisement containing the particulars required to be stated in the notice under sub-section (1) of section 238 ; and such advertisement shall be issued before such reasonable and sufficient interval as may be prescribed before the date of sailing of any such ship from such port or place.

(2) The Central Government may, by order in writing, exempt any class of ships from the operation of sub-section (1).

## **256. Ship taking additional passengers at intermediate place.**

If any unberthed passenger ship performing a voyage between ports or places in India takes additional unberthed passengers on board at an intermediate port or place, the master shall obtain from the certifying officer at that port or place a supplementary certificate stating—

- (a) the number of unberthed passengers so taken on board ; and
- (b) that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for the ship, have been placed on board, of the quality prescribed, properly packed and sufficient to supply the unberthed passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the scale for the time being prescribed :

Provided that, if the certificate B held by the master of the ship states that food, and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for her, have been placed on board, of the quality prescribed, properly packed and sufficient to supply the full number of unberthed passengers which she is capable of carrying, the master shall not be bound to obtain any such supplementary certificate, but shall obtain from the certifying officer an endorsement on the certificate B showing the number of passengers taken on board, and the number of passengers discharged, at that port or place.

## **257. Statements concerning passengers.**

(1) The master of an unberthed passenger ship departing or proceeding on a voyage from a port or place in India to a port or place outside India shall sign a statement in duplicate, specifying the number and the respective sexes of all the unberthed passengers, and the number of the crew, and shall deliver both copies to the certifying officer, who shall thereupon, after having first satisfied himself that the entries are correct, countersign and return to the master one copy of the statement.

(2) In either of the following cases, namely :—

- (a) if after the ship has departed or proceeded on such a voyage any additional unberthed passengers are taken on board at a port or place within India appointed under this Part for the embarkation of unberthed passengers ; or
- (b) if the ship upon her voyage touches or arrives at any such port or place, having previously received on board additional unberthed passengers at any port or place outside India ;

the master shall obtain a fresh certificate to the effect of certificate B from the certifying officer at that port or place, and shall make an additional statement specifying the number and the respective sexes of all the additional passengers.

## **258. Death of unberthed passengers on voyage.**

(1) The master of any unberthed passenger ship performing a voyage between ports or places in India, shall, on arrival at her port of destination, notify to the certifying officer or such other officer as the Central Government may appoint in this behalf, the date and supposed cause of death of every unberthed passenger who may die on the voyage.

(2) The master of any unberthed passenger ship performing a voyage between a port or place in India and a port or place outside India, shall note in writing on the statement or the additional statement referred to in section 257 the date and supposed cause of death of any unberthed passenger who may die on the voyage, and shall, when the ship arrives at her port or place of destination or at any port or place where it may be intended to land unberthed passengers, and before any passenger leaves the ship, produce the statement with any additions made thereto—

- (a) where such port or place is in India, to the certifying officer or such other officer as the Central Government may appoint in this behalf ;
- (b) where such port or place is outside India, to the Indian consular officer.

## **259. Certain ships to carry medical officer and attendants.**

(1) Every ship carrying unberthed passengers and crew not exceeding one thousand in number, shall have on board as part of her complement at least one medical officer possessing such qualifications as may be prescribed.

(2) Every ship carrying unberthed passengers and crew exceeding one thousand in number shall, in addition to a medical officer, have on board as part of her complement such number of medical attendants as may be prescribed.

(3) Every ship carrying unberthed passengers shall be provided with a hospital with such medical stores and equipment as may be prescribed.

## **260. Bringing passengers from foreign port in excess of authorised number prohibited.**

No owner, agent or master of an unberthed passenger ship shall carry or cause to be carried from any port or place outside India to any port or place in India a number of passengers greater than—

- (a) the number allowed for the ship by or under this Part, or
- (b) the number allowed by the licence or certificate, if any, granted in respect of the ship at her port or place of departure, whichever number is less.

## **261. Passenger welfare cess.**

(1) With effect from such date as the Central Government may by notification in the Official Gazette, specify, there shall be levied on the passage money paid by every passenger carried by an unberthed passenger ship departing or proceeding from any port or place in India a cess to be called the passenger welfare cess at such rate not exceeding five per cent. of the passage money as the Central Government may, by notification in the Official Gazette, specify, and different rates may be specified in respect of different classes of passengers and voyages.

(2) The passenger welfare cess shall be collected by the owner or charterer of the unberthed passenger ship or the agent of the owner or charterer as an addition to the passage money, and shall, after deduction of such costs of collection, if any, as the Central Government may determine, be paid to such authority as the Central Government may specify.

(3) The proceeds of the passenger welfare cess shall, after due appropriation made by Parliament by law, be utilised for the purpose of providing amenities to passengers travelling by unberthed passenger ships.

*Explanation.* — In this section, “passage money” means the total amount of all charges of whatever nature payable by a passenger in respect of his carriage on an unberthed passenger ship, and includes the charges, if any, for provision of food on board the ship, but does not include the cess payable under this section.

**262. Power to make rules as to unberthed passenger ships.**

The Central Government may, subject to the condition of previous publication, make rules to regulate, in the case of unberthed passenger ships or any class of such ships, all or any of the following matters, namely:—

- (a) the classification of voyages with reference to the distance between the port of departure and the port of destination, the duration of the voyage, or any other consideration which the Central Government may think fit to take into account for the purpose;
- (b) the seasons of fair weather and seasons of foul weather for purposes of any voyage;
- (c) the space to be allowed for unberthed passengers in respect of different classes of voyages and for seasons of fair and foul weather;
- (d) the disallowance of any space considered unsuitable by the surveyor for the carriage of unberthed passengers;
- (e) the space to be set apart for alleyways, passages and the like;
- (f) the provision of airing space for unberthed passengers;
- (g) the scale according to which dining rooms, latrines, wash places, baths, dressing rooms and other amenities are to be provided;
- (h) the provision of separate accommodation for women and children;
- (i) the prohibition or regulation of the carriage of cargo in any space reserved for passengers;
- (j) where the deck on which unberthed passengers are accommodated is **not** covered with wood, the nature of the sheathing to be provided in the space reserved for passengers;
- (k) the disposal of baggage of passenger on board ship and the provision of separate space in the between-decks for the storage of light baggage;
- (l) the conditions under which passengers may be allowed to be carried in the upper deck in seasons of foul weather;
- (m) the provision of bunks for unberthed passengers or for any proportion of such passengers on any specified classes of voyages, and the size and other particulars relating to the bunks to be so provided;
- (n) the scale on which food, fuel and water are to be supplied to passengers or to any class of passengers, and the quality of the food, fuel and water;
- (o) the nature and extent of hospital accommodation and the medical stores and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency;
- (p) the licensing and appointment of medical officers and attendants in cases where they are required by this Part to be carried;
- (q) the boats, anchors and cables to be provided on board;
- (r) the instruments for purposes of navigation to be supplied;
- (s) the functions of the master, medical officer (if any) and other officers of the ship during the voyage;
- (t) the access of between-decks passengers to the upper deck;
- (u) the local limits within which, and the time and mode at and in which, passengers are to be embarked or discharged at any port or place appointed under this Part in that behalf;
- (v) the time within which any ship of a specified class is to depart or proceed on her voyage after commencing to take passengers on board;
- (w) the conditions under which live-stock may be allowed to be carried;
- (x) the licensing, supervision and control of persons engaged in assisting persons to obtain unberthed passenger accommodation in ships depart-

ing or proceeding from any port or place in India and the prohibition of unlicensed persons from being so engaged;

- (y) the manner of collection of the passenger welfare cess and matters incidental thereto;
- (z) generally to carry out the purposes of this Part relating to unberthed passenger ships.

*Special provisions regarding pilgrim ships.*

**263. Bunks to be provided for pilgrims.**

(1) Every pilgrim ship shall provide for each pilgrim a bunk of the prescribed size and particulars.

(2) Every pilgrim ship shall have reserved for the use of the pilgrims on board gratuitously by day and by night so much of the upper deck as is not required for the airing space of the crew or for permanent structures:

Provided that the upper deck space available for pilgrims shall in no case be less than six superficial feet for each pilgrim on board.

**264. Hospital accommodation.**

There shall be a hospital on board every pilgrim ship offering such conditions relating to security, health and space, and capable of accommodating such proportion, not exceeding five per cent. of the maximum number of pilgrims which the ship is certified to carry, as may be prescribed.

**265. Statements concerning pilgrims to be delivered before ship departs.**

The master of every pilgrim ship departing or proceeding from any port or place in India shall sign a statement in duplicate in the prescribed form specifying the total number of all the pilgrims embarked and the number of pilgrims of each sex embarked and the number of the crew and such other particulars as may be prescribed, and shall deliver both copies to the certifying officer or such other officer as the Central Government may appoint in this behalf at the port or place and such officer shall thereupon, after having first satisfied himself that the entries are correct, countersign and return to the master one copy of the statement.

**266. Pilgrim ship taking additional pilgrims at intermediate places.**

In either of the following cases, namely:—

- (a) if after a pilgrim ship has departed or proceeded on her voyage any additional pilgrims are taken on board at a port or place within India appointed under this Part for the embarkation of pilgrims, or
- (b) if a pilgrim ship upon her voyage touches or arrives at any such port or place, having previously received on board additional pilgrims at any port or place outside India,

the master shall obtain a fresh certificate to the effect of certificate B from the certifying officer at that port or place, and shall make an additional statement specifying the number and respective sexes of all the additional pilgrims.

**267. Particulars relating to deaths of pilgrims on voyage.**

The master of every pilgrim ship shall note in writing on the copy of the statement or the additional statement referred to in S. 265 or S. 266, the date and supposed cause of death of any pilgrim who may die on the voyage, and shall, when the pilgrim ship arrives at her port or place of destination or at any port or place where it may be intended to discharge pilgrims, and before any pilgrims disembark, produce the statement, with any additions made thereto,—

- (a) where such port or place is in India, to the certifying officer or such other officer as the Central Government may appoint in this behalf;
- (b) where such port or place is outside India, to the Indian consular officer.

**268. Statement concerning pilgrims to be delivered before pilgrims disembark in India.**

The master of every pilgrim ship, arriving at any port or place in India at which it may be intended to discharge pilgrims, shall, before any pilgrims disembark, deliver a statement signed by him specifying the total number of all the pilgrims on board and the number of pilgrims of each sex and the number of the crew, and such other particulars as may be prescribed to the certifying officer or such other officer as the Central Government may appoint in this behalf at the port or place.

**269. Certain pilgrim ships to carry medical officers and attendants.**

(1) Every pilgrim ship carrying pilgrims and crew not exceeding one thousand in number shall have on board a medical officer possessing such qualifications as may be prescribed, and, if the number of pilgrims and crew carried exceeds one thousand, a second medical officer similarly qualified and also in all cases such medical attendants as may be prescribed.

(2) A medical officer of every pilgrim ship shall perform such duties and functions, keep such diaries and submit such reports or other returns, as may be prescribed.

(3) No medical officer or attendant on a pilgrim ship shall charge any pilgrim on such ship for his services.

**270. Bond where pilgrim ship proceeds on outward voyage.**

(1) Port clearance shall not be granted from any port in India to any pilgrim ship unless the master, owner or agent and two sureties resident in India have executed, in favour of the Central Government, a joint and several bond for the sum of ten thousand rupees or has given such other guarantee or security as may be acceptable to that Government covering all voyages which may be made by the ship in the current pilgrim season, conditioned that—

(a) the master and medical officer shall comply with the provisions of this Part and the rules made thereunder, and

(b) the master, owner or agent, shall pay any sum claimed by the Central Government under sub-section (2) of section 277.

(2) A bond, guarantee or security may be given under this section covering any or all of the pilgrim ships owned by one owner, and in such cases the amount of the bond, guarantee or security shall be ten thousand rupees for each ship covered.

**271. Medical inspection and permission required before embarkation of pilgrims.**

(1) No pilgrim shall be received on board any pilgrim ship at any port or place in India unless and until he has been medically inspected, at such time and place, and in such manner, as the Central Government may fix in this behalf, nor until the certifying officer has given permission for the embarkation of pilgrims to commence.

(2) The medical inspection of female pilgrims shall, subject to any rules which may be made under this Act and as far as may be practicable, be carried out by women.

(3) No pilgrim shall be received on board any pilgrim ship unless he produces the medical certificate signed by a person who is duly qualified to grant such certificate, showing that such pilgrim—

(a) has been inoculated against cholera within such period before the inspection, as may be prescribed; and

(b) has been vaccinated against small-pox within such period before the inspection as may be prescribed :

Provided that the officer making the inspection may dispense with the certificate of vaccination, if in his opinion the pilgrim has marks showing that he has had small-pox.

(4) If, in the opinion of the officer making an inspection under this section, any pilgrim is suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, such pilgrim shall not be permitted to embark.

(5) All articles which have been contaminated by persons suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or are suspected of having been so contaminated shall, before being taken on board a pilgrim ship, be disinfected, under the supervision of a medical officer appointed by the Central Government for the purpose, in such manner as may be prescribed.

## **272. Medical inspection after embarkation in certain cases.**

(1) If in any case a pilgrim ship does not proceed on her voyage within forty-eight hours after all the pilgrims have been received on board, and there is reason to suspect that any person on board is suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, a medical inspection of all persons on board may be held in such manner as the Central Government may direct.

(2) If on such inspection any person is found to be suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, he shall, together with all articles belonging to him, be at once removed from the ship.

## **273. Pilgrims to arrange return passages.**

No pilgrim shall be received on board any pilgrim ship at any port or place in India unless he

(a) is in possession of a return ticket, or

(b) has deposited with the officer authorised in this behalf by the Central Government such sum for the purpose of defraying the cost of a return ticket as that Government may specify by notification in the Official Gazette :

Provided that the authorised officer may exempt any pilgrim from all or any of the aforesaid requirements, if he is satisfied that it is inexpedient, in the special circumstances of the case, to enforce them.

## **274. Issue or production of tickets.**

(1) Every pilgrim travelling on a pilgrim ship shall be entitled, on payment of his passage money and fulfilment of other prescribed conditions, if any, to receive a ticket in the prescribed form, and shall be bound to produce it to such officers and on such occasions as may be prescribed and otherwise to deal with it in the prescribed manner :

Provided that no pilgrim, who has not been exempted under the proviso to section 273, shall be given a ticket other than a return ticket unless he has made the deposit required by that section.

(2) Any ticket issued to a pilgrim for a voyage on a pilgrim ship shall entitle him to receive food and water, on the scale and of the quality prescribed and medicines free of further charge, throughout the voyage.

## **275. Refund of passage money and deposits.**

(1) Every pilgrim prevented from embarking under section 271, or removed from the ship under section 272, or otherwise prevented from proceeding shall

be entitled to the refund of any passage money which he may have paid, and of any deposit which he may have made under section 273.

(2) Any pilgrim who, within one year of his sailing from India, satisfies the Indian consular officer at Jeddah that he intends to return to India by a route other than the route by which he came from India, shall be entitled to a refund of any deposit made by him under section 273, or, if he is in possession of a return ticket, to a refund of half the passage money paid by him.

(3) Where any pilgrim dies in the Hedjaz or on the voyage thereto, any person nominated by him in this behalf in writing in the prescribed manner, or, if no person has been so nominated the legal representative of the pilgrim, shall be entitled to a refund of any deposit made by the pilgrim under section 273, or, if the pilgrim was in possession of a return ticket, to a refund of half the passage money paid by him.

(4) Where any pilgrim fails to return to India from the Hedjaz within one year of his sailing from India, or returns to India by a route other than the route by which he came from India, he or any person nominated by him in this behalf in writing in the prescribed manner shall be entitled to a refund of any deposit made by such pilgrim under section 273, or, if such pilgrim was in possession of a return ticket, to a refund of half the passage money paid by such pilgrim, except where such deposit or passage money has already been refunded under this section.

(5) Refunds under this section of deposits shall be subject to such conditions and of passage money to such deductions and conditions as may be prescribed.

## **276. Disposal of unclaimed passage money and deposits.**

If any pilgrim —

- (a) who is entitled to a refund of passage money under sub-section (1) of section 275, does not claim such refund within the prescribed period, or
- (b) who has purchased a return ticket, does not on the basis of such ticket obtain a return passage from the Hedjaz within the prescribed period and the value of the return half of such ticket has not been refunded under section 275, or
- (c) who is entitled under section 275 to a refund of any deposit made under section 273 does not claim such refund within the prescribed period,

such passage money or value or deposit shall, subject to the exercise of the rights conferred by sub-section (4) of section 275, be made over to such authority administering any fund maintained for the assistance of pilgrims as the Central Government may, by general or special order, designate in this behalf.

## **277. Cost of return journey of pilgrims on ships other than those for which return ticket is available.**

(1) The master, owner or agent of every pilgrim ship shall make all arrangements for ensuring the return of all pilgrims in possession of a return ticket issued in India who are carried to the Hedjaz by such ship, within a period of ninety days after the Haj day in a year:

Provided that, for the purpose of computing the said period of ninety days, no period shall be taken into account during which the ship is prevented from carrying pilgrims on the return passage by reason of the port of Jeddah having been declared by proper authority to be infected or by reason of war, disturbance or any other cause not arising from any act or default of the master, owner or agent.

(2) Where any such pilgrim who has notified to the prescribed authority in the prescribed manner his desire to embark for the return voyage is, owing to his inability to obtain accommodation within the period of ninety days aforesaid in a ship for which the return ticket is available, detained at Jeddah beyond the said period, the master, owner or agent of the ship in which such pilgrim



was carried to the Hedjaz shall pay to the Central Government in respect of such pilgrim such sum not exceeding double the sum received by the master, owner or agent in respect of the return ticket as the Central Government claims as the costs of repatriating the pilgrim, together with a sum of rupees five for each day after the expiry of the period aforesaid during which the pilgrim has been detained at eddah.

(3) A certificate of such detention purporting to be made and signed by the Indian consular officer at Jeddah shall be received in evidence in any court in India without proof of the signature or of the official character of the person who has signed the same.

## **278. Notice of sailing of pilgrim ship.**

(1) The master, owner or agent of any ship which is intended to sail on a voyage as a pilgrim ship from any port or place in India shall, before advertising such ship for the conveyance of pilgrims or offering to convey any pilgrim by such ship or selling or permitting any person to sell a passage ticket to any pilgrim for conveyance by such ship, supply to the officer appointed in this behalf (hereinafter referred to as the pilgrim officer) at the port or place from which the ship is to commence the voyage, and at each port or place in India at which she is to touch for the purpose of embarking pilgrims, full particulars as to the name, tonnage and age of the ship, the maximum number of passage tickets of each class to be issued, the maximum price of each class of ticket, the probable date on which the ship is to sail from that port or place, the ports, if any, at which she is to touch, the place of her destination, and the probable date of her arrival thereat.

(2) The master, owner or agent shall supply to the pilgrim officer, within three days from the date of demand, such further information in regard to the matters mentioned in sub-section (1) as that officer may in writing demand from him.

(3) (a) The master, owner, or agent of the ship shall advertise at such port or place and in such manner as may be prescribed

(i) the place of destination of the ship,

(ii) the price of each class of passage tickets which shall not be in excess of the price communicated to the pilgrim officer under sub-section (1), and

(iii) the provisional date of sailing from that port or place.

(b) The master, owner or agent shall also advertise the final date of sailing not less than fifteen days before such date.

(4) No master, owner or agent, shall—

(a) without reasonable cause, the burden of proving which shall lie upon him, fail or refuse to supply any particulars or information which he is by or under this section required to supply or supply false particulars or information; or

(b) advertise any ship for the conveyance of pilgrims, or offer to convey pilgrims by any ship, or sell or promise or permit any person to sell passage tickets to pilgrims for conveyance by any ship, without having first supplied the particulars required by sub-section (1) and in accordance with the provisions of that sub-section; or

(c) advertise a price for passage tickets at the port or place in excess of the price communicated, to the pilgrim officer under sub-section (1); or

(d) offer to convey pilgrims by any ship from any port or place in India or sell or promise or permit any person to sell passage tickets to pilgrims for conveyance by a ship from any such port or place without having advertised as required by clause (a) of sub-section (3) the matters specified in that clause; or

- (e) sell or permit any person to sell to any pilgrim any passage ticket at a price in excess of the price communicated to the pilgrim officer under sub-section (1).

**279. Compensation for delay in sailing.**

(1) If a pilgrim ship fails to proceed from any port or place on the date advertised under clause (b) of sub-section (3) of section 278 as the final date of sailing therefrom, the master, owner or agent shall become liable to pay as compensation to each pilgrim who has paid his passage money on or before such date the sum of three rupees for each completed day during which the sailing of the ship is delayed after that date :

Provided that such compensation shall not be payable in respect of any period during which the departure of the ship is impossible owing to any cause not arising from the act or default of the master, owner or agent, and the burden of proving such cause shall lie on such master, owner or agent :

Provided further that where compensation has been paid or has become payable to any pilgrim in respect of delay in the sailing of the ship from any port or place and the sailing of the ship from any other port or place is thereafter delayed beyond the date advertised in that behalf, the pilgrim shall be entitled to compensation only in respect of any period by which the duration of such further delay exceeds the duration of the delay in respect of which he has already received or become entitled to compensation.

(2) In the event of such failure, the master, owner or agent shall be bound forthwith to inform the pilgrim officer at the port or place at which the delay occurs of the number of passage tickets of each class which have been issued for the voyage on or before the advertised final date of sailing.

(3) Any sum payable as compensation under sub-section (1) shall be paid on behalf of the pilgrims entitled thereto to the pilgrim officer at the port or place at which the delay occurs on receipt by the master, owner or agent of a notice from that officer specifying the sum payable, and that officer shall, in such manner as may be prescribed, pay to each such pilgrim the compensation paid in respect of his detention :

Provided that, if an objection is made by the master, owner or agent that the sum specified in any such notice or any part of such sum is not payable by him, the sum paid or, as the case may be, the balance thereof remaining after payment to the pilgrims entitled thereto of compensation the right to which is not in dispute, shall be held in deposit until the objection has been decided :

Provided further that, if for any reason the compensation due to any pilgrim cannot be paid to him at the time of embarkation or at or before the time of his disembarkation at the port of his destination, the sum so remaining unpaid shall be made over to such authority administering any fund maintained for the assistance of pilgrims as the Central Government may, by general or special order, designate in this behalf.

(4) If the master, owner or agent objects that the sum specified in the notice issued under sub-section (3) or any part thereof is not payable by him, he may, at the time of payment of such sum, give to the pilgrim officer notice of his objection, together with a statement of the grounds thereof, and the pilgrim officer shall thereupon either cancel or modify the aforesaid notice in accordance with the objection and refund the sum held in deposit under sub-section (3), or refer the objection for decision to a Presidency Magistrate or a Magistrate of the first class exercising jurisdiction at the port or place at which the ship is delayed, whose decision on such reference, shall be final; and there shall be refunded to the master, owner or agent any amount allowed to him by such decision.

(5) On the failure of any pilgrim ship to proceed from any port or place on the date advertised under clause (b) of sub-section (3) of section 278 as the date

of final sailing therefrom, the pilgrim officer at that port or place shall forthwith give notice of such failure to the officer authorised to grant port clearance to ships thereat, and such officer shall refuse port clearance to the pilgrim ship until the master, owner or agent produces to him a certificate of the pilgrim officer that all sums payable by way of compensation under this section up to the day on which the ship is to proceed have been paid.

### **280. Substitution of ships.**

Notwithstanding anything contained in section 278 or section 279, where any ship which has been advertised under section 278 for the conveyance of pilgrims has been or is likely to be delayed beyond the advertised final date of sailing, the owner or agent may, with the permission in writing of the pilgrim officer, substitute for it any other ship which is capable of carrying not less than the same number of pilgrims of each class, and on such permission being given the advertisement shall be deemed to have been made in respect of the ship so substituted, and all the provisions of those sections shall apply accordingly in respect of such ship.

### **281. Sanitary taxes payable by master of pilgrim ship.**

The master of every pilgrim ship shall be bound to pay the whole amount of the sanitary taxes imposed by lawful authority at the ports visited and such amount shall be included in the cost of the tickets issued to the pilgrims.

### **282. Power to make rules relating to pilgrim ships.**

The Central Government may, subject to the condition of previous publication, make rules to regulate all or any of the following matters, namely :—

- (a) the boats, anchors and cables to be provided on board pilgrim ships;
- (b) the instruments to be supplied for purposes of navigation;
- (c) the fittings and other appliances to be provided in the upper and between decks for the comfort and convenience of pilgrims;
- (d) the scale on which, and the manner in which, cooked and uncooked food and water are to be supplied to pilgrims and the quality of such food and water;
- (e) the kinds of food to be provided for pilgrims on payment, in addition to the food to be supplied in accordance with the rules made under cl. (d), and the charges which may be made for the same;
- (f) the quality, quantity and storage of the cargo to be carried;
- (g) the allotment of the upper deck space between the various classes of pilgrims;
- (h) the distribution or disposal of the baggage of pilgrims on board ship;
- (i) the nature and extent of the hospital accommodation and the medical stores, disinfectants, and other appliances and fittings to be provided on board free of charge to pilgrims for maintaining health, cleanliness and decency;
- (j) the form of the statements to be furnished by the master under sections 265 and 268, and the particulars to be entered therein;
- (k) the appointment of medical officers and other attendants in cases where they are required by the provisions of this Part relating to pilgrim ships to be carried and the diaries, reports and other returns to be kept or submitted by such medical officers;
- (l) the manner in which contaminated articles shall be disinfected before being taken on board a pilgrim ship;
- (m) the manner in which, and the persons by whom, the medical inspection of women shall be carried out;
- (n) the manner in which deposits shall be made for the purposes of section 273, and any matter in respect of which provision is, in the

opinion of the Central Government, necessary or expedient for the purpose of giving effect to the provisions of that section ;

- (o) the manner in which provisional bookings may be made, the acceptance of deposits for such bookings and the forfeiture of any part of the deposit in cases in which any such bookings are cancelled ;
- (p) the supply of tickets to intending pilgrims, the form of such tickets and the conditions and other matters to be specified thereon, and the amount of the sanitary taxes to be included in the cost thereof ;
- (q) the refund of passage money and deposits under section 275 and the manner in which persons shall be nominated under that section for the purpose of entitling them to a refund ;
- (r) the period after which unclaimed passage money and deposits liable to be refunded shall be disposed of in the manner specified in section 276 ;
- (s) the manner in which the dates of sailing shall be advertised under section 278 ; the appointment of pilgrim officers for the purposes of that section and sections 279 and 280 ; the manner in which payment shall be made under section 279 to pilgrims and to the pilgrim officer; and the procedure to be followed by masters, owners or agents and by pilgrim officers and magistrates in proceedings under that section ;
- (t) the functions of the master, medical officer and other ship's officers during the voyage ;
- (u) the local limits within which, and the time and mode at and in which, pilgrims shall be embarked or discharged at any port or place appointed under this Part in that behalf ;
- (v) the time within which a pilgrim ship shall depart or proceed on her voyage after commencing to take pilgrims on board ;
- (w) providing that a pilgrim shall not be received on board any pilgrim ship, unless he is in possession of a passport or a pilgrim's pass, regulating the issue of pilgrims' passes, and prescribing the form of and fees which may be charged for such passes; and
- (x) generally, to carry out the provisions of this Part relating to pilgrim ships.

## PART IX

### SAFETY

#### **283. Countries to which Load Line Convention or Safety Convention applies.**

(1) The Central Government, if satisfied, —

(a) that the Government of any country has accepted or denounced the Load Line Convention<sup>a</sup> or, as the case may be, the Safety Convention;<sup>b</sup> or

(b) that the Load Line Convention or, as the case may be, the Safety Convention extends, or has ceased to extend to any territory;

may, by notification in the Official Gazette, make a declaration to that effect.

(2) Any declaration made by or on behalf of the Central Government before the commencement of this Act in any form whatsoever, that the Government of any country has accepted or denounced the Load Line Convention or that the said Convention extends or has ceased to extend to any territory shall be deemed to have been made under sub-section (1).

[a] Load line is an imaginary line along the side of a ship below which the vessel must not sink when loaded (for the marking of load lines on ships, see S. 312). The Load Line Convention is an International Convention respecting Load Line, 1930. For definition of "Load Line Convention," see S. 3 (20). [b] This is the International Convention for the Safety of Life at Sea (known briefly as the Safety Convention) of 1948, replacing the Safety Convention of 1929. This Convention contains a provision for the enactment and promulgation by Contracting Governments of laws and regulations to give effect to its provisions. This Convention came into force on the 19th November, 1952. For definition of "Safety Convention," see S. 3 (37).

*Construction of ships***284. Construction rules.**

(1) The Central Government may make rules (in this Act called the construction rules), prescribing the requirements that the hull, equipment and machinery of Indian passenger ships shall comply with.

(2) The rules made under sub-section (1) shall include such requirements as appear to the Central Government to implement the provisions of the Safety Convention prescribing the requirements that the hull, equipment and machinery of passenger ships shall comply with, except so far as those provisions are implemented by the rules for life saving appliances, the radio rules, the rules for direction finders or the collision regulations.

(3) The powers conferred on the Central Government by this section shall be in addition to the powers conferred by any other provision enabling it to prescribe the requirements that passenger ships shall comply with.

*Prevention of collisions***285. Collision regulations.**

(1) The Central Government may make regulations for the prevention of collisions at sea and may thereby regulate the lights and shapes to be carried and exhibited, the fog and distress signals to be carried and used, and the steering and sailing rules to be observed by Indian ships and sailing vessels registered in India.

(2) The collision regulations, together with the provisions of this Part relating thereto or otherwise relating to collisions, shall be observed by all foreign ships and sailing vessels within Indian jurisdiction, and in any case arising in any Court in India concerning matters arising within Indian jurisdiction, such ships and sailing vessels shall, so far as respects the collision regulations and the said provisions of this Act, be treated as if they were Indian ships or sailing vessels registered in India, as the case may be.

**286. Observance of collision regulations.**

(1) The owner or master of every ship and the owner or tinal of every sailing vessel to which section 285 applies shall obey the collision regulations, and shall not carry or exhibit any lights or shapes or use any fog or distress signals, other than those required by the said regulations.

(2) If any damage to person or property arises from the non-observance by any such ship or sailing vessel of any of the collision regulations, the damage shall be deemed to have been occasioned by the wilful default of the person in charge of the ship or the sailing vessel, as the case may be, at the time unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulations necessary.

**287. Inspectors of lights and shapes and fog and distress signals.**

(1) The Central Government may appoint persons to inspect in any port ships or sailing vessels to which the collision regulations apply, for the purpose of seeing that such ships or sailing vessels are properly provided with lights and shapes and with the means of making fog and distress signals, in pursuance of such regulations.

(2) If an inspector appointed under sub-section (1) finds that any ship or sailing vessel is not so provided, he shall give to the owner, master or tinal, notice in writing pointing out the deficiency, and also what, in his opinion, is requisite in order to remedy the same.

(3) Every notice so given shall be communicated in the prescribed manner to the customs collector at any port from which such ship or sailing vessels may seek to clear; and no customs collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea

without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship or sailing vessel is properly provided with lights and shapes and with the means of making fog and distress signals in pursuance of the said regulations.

*Life saving appliances and fire appliances.*

**288. Power to make rules as to life saving appliances.**

(1) The Central Government may, subject to the condition of previous publication, make rules prescribing the life saving appliances to be carried by every Indian ship going to sea from any port or place in India.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:

- (a) the arranging of ships into classes, having regard to the services in which they are employed, the nature and duration of the voyage and the number of persons carried ;
- (b) the number, description and mode of construction of the boats, life-rafts, line throwing appliances, life-jackets and life-buoys to be carried by ships according to the classes in which the ships are arranged ;
- (c) the equipment to be carried by any such boats and rafts and the method to be provided to get the boats and other life saving appliances into the water, including oil for use in stormy weather ;
- (d) the provision in ships of a proper supply of lights inextinguishable in water and fitted for attachment to life-buoys ;
- (e) the quantity, quality and description of buoyant apparatus to be carried on board ships either in addition to or in substitution for boats, life-rafts life-jackets and life-buoys ;
- (f) the position and means of securing the boats, life-rafts, life-jackets, life-buoys and buoyant apparatus ;
- (g) the marking of boats, life-rafts, and buoyant apparatus so as to show their dimensions and the number of persons authorised to be carried on them ;
- (h) the meaning of life-boats and the qualifications and certificates of lifeboatmen ;
- (i) the provision to be made for mustering the persons on board and for embarking them in the boats (including provision for the lighting of, and the means of ingress to and egress from, different parts of the ship);
- (j) the provision of suitable means situated outside the engine room whereby any discharge of water into the boats can be prevented ;
- (k) the assignment of specific duties to each member of the crew in case of emergency ;
- (l) the manner in which a notice given under section 287 or section 290 shall be communicated to the customs collector ;
- (m) the practice in ships of boat drills, and fire drills ;
- (n) the provision in ships of means of making effective distress signals by day and by night ;
- (o) the provision in ships, engaged on voyages in which pilots are likely to be embarked, of suitable pilot ladders, and of ropes, lights and other appliances designed to make the use of such ladders safe ;
- (p) the periodical examination of any appliances or equipment required by any rules made under this Act to be carried by ships ; and
- (q) the fees to be charged for the grant of any certificate under subsection (3) of section 290.

**289. Rules relating to fire appliances.**

The Central Government may make rules prescribing the methods to be adopted and the appliances to be carried by every Indian ship going to sea from any port or place in India for the prevention, detection and extinction of fire on the ship (hereinafter referred to as fire appliances).

**290. Inspection of life saving appliances and fire appliances.**

(1) A surveyor may, at any reasonable time, inspect any ship for the purpose of seeing that she is properly provided with life saving and fire appliances in conformity with the rules made under this Act.

(2) If the said surveyor finds that the ship is not so provided he shall give to the master or owner notice in writing pointing out the deficiency, and also pointing out what in his opinion is requisite to remedy the same.

(3) Every notice so given shall be communicated in the prescribed manner to the customs collector of any port at which the ship may seek to obtain a clearance and the ship shall be detained until a certificate signed by such surveyor is produced to the effect that the ship is properly provided with life saving and fire appliances in conformity with the said rules.

*Installation of radio telegraphy, radio telephony and direction finders***291. Radio requirements.**

(1) Every Indian ship, being a passenger ship, and every other Indian ship of five hundred tons gross tonnage or more, shall, in accordance with the rules made under section 296, be provided with a radio installation and shall maintain a radio telegraph service or a radio telephone service of the prescribed nature and shall be provided with such certificated operators and watchers as may be prescribed:

Provided that the Central Government may, by notification in the Official Gazette, exempt from the obligation imposed by this section any ship or class of ships if it is of opinion that having regard to the nature of the voyage on which the ship or ships are engaged or other circumstances of the case, the provision of a radio installation is unnecessary or unreasonable.

(2) The radio installation required under the said rules to be provided for a passenger ship or for any other ship of sixteen hundred tons gross or more shall be a radio telegraph installation; and that required to be provided for a ship of less than sixteen hundred tons gross, other than a passenger ship, shall be either a radio telegraph installation or a radio telephone installation at the option of the owner.

**292. Radio direction finding apparatus.**

Every Indian ship of sixteen hundred tons gross or more shall be provided with a radio direction finder of the prescribed description.

**293. Radio log.**

(1) Every ship compulsorily equipped under the provisions of section 291 with a radio telegraph or radio telephone installation shall maintain in the radio telegraph or radio telephone room a radio log in which shall be entered such particulars relating to the operation of the radio telegraph or radio telephone installation and as to the maintenance of the radio telegraph or radio telephone service as may be prescribed.

(2) The provisions of section 215 shall apply to the radio log kept under this section as if it were an official log.

**294. Powers of radio inspectors.**

(1) A radio inspector may inspect any ship for the purpose of seeing that she is properly provided with a radio telegraph or radio telephone installation and certificated operators in conformity with this Part, and for this purpose may go



on board any ship at all reasonable times and do all things necessary for the proper inspection of the ship for the purpose of the provisions of this Part relating to radio telegraphy or radio telephony and may also require the master of the ship to supply him with any information which it is in the power of the master to supply for that purpose, including the production of any certificate granted under this Part in respect of the installation, and of the certificates of the operators and watchers on the ship:

Provided that if a valid safety convention certificate is produced in respect of any ship other than an Indian ship, the inspection shall be limited to seeing that the ship is provided with a radio telegraph or radio telephone installation and that the number of certified operators corresponds substantially with the particulars stated in the certificate.

(2) If a radio inspector finds that a ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also pointing out what in his opinion is requisite to remedy the same.

(3) Every notice given under sub-section (2) shall be communicated in the prescribed manner to the customs collector of any port at which the ship may seek to obtain port clearance who shall order that the ship shall be detained until a certificate under the hand of a radio inspector is produced to the effect that the ship is properly provided with a radio telegraph or radio telephone installation and certified operators and watchers in conformity with this Part.

## **295. Application of this Part to ships other than Indian Ships.**

The provisions of this Part relating to radio telegraphy, radio telephony and direction finders shall apply to ships other than Indian ships while they are within any port in India in like manner as they apply to Indian ships.

## **296. Power to make rules.**

(1) The Central Government may make rules to carry out the purposes of this Part relating to radio telegraphy or radio telephony.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the nature of the radio telegraph or radio telephone installation and radio direction finding apparatus to be provided and of the service to be maintained, the form of the radio log and the particulars to be entered therein, and the number, grades and qualifications of certified operators to be carried;
- (b) the manner in which a notice given under section 294 shall be communicated to the customs collector;
- (c) the charging of fees for the grant of the certificate referred to in sub-section (3) of section 294, the amount of such fees and the manner in which they shall be recoverable.

### *Signalling lamps*

## **297. Signalling lamps.**

(3) Every Indian ship exceeding one hundred and fifty tons gross shall, when proceeding to sea from any port or place in India to any port or place outside India, be provided with a signalling lamp of the type approved by the Central Government.

### *Stability information*

## **298. Information about ships's stability.**

(1) There shall be carried on board every Indian ship whose keel was laid after the 15th day of June, 1953, such information in writing about the ship's stability as is necessary for the guidance of the master in loading and ballasting the ship.



(2) The said information shall be in such form as may be approved by the Central Government (which may approve the provision of the information in the form of a diagram or drawing only) and shall be based on the determination of the ship's stability by means of an inclining test of the ship :

Provided that the Central Government may allow the information to be based on a similar determination of the stability of a sister ship.

(3) When any information under this section is provided for any ship, the owner shall send a copy thereof to the Director-General.

(4) It is hereby declared that for the purpose of section 208 (which requires documents relating to navigation to be delivered by the master of a ship to his successor) information under this section shall be deemed to be a document relating to the navigation of the ship.

*Safety certificates, safety equipment certificates, safety radio telegraphy certificates, safety radio telephony certificates, exemption certificates, etc.*

## **299. Safety certificates and qualified safety certificates for passenger ships.**

(1) Where, on receipt of a declaration of survey granted under Part VIII in respect of a passenger ship, the Central Government is satisfied that the ship complies with the construction rules and with the provisions of this Act and the rules made thereunder relating to life saving and fire appliances and radio telegraphy or radio telephony installation applicable to such ship and is provided with lights and shapes and the means of making fog and distress signals required by the collision regulations, the Central Government may issue in respect of the ship a certificate in the prescribed form to be called a safety certificate.

(2) Where on receipt of declaration of survey granted under Part VIII in respect of a passenger ship the Central Government is satisfied that there is in force in respect of the ship an exemption certificate granted under section 302 and that the ship complies with all the requirements referred to in sub-section (1) other than those from which the ship is exempt under that certificate, the Central Government may issue in respect of the ship a certificate in the prescribed form to be called a qualified safety certificate.

## **300. Safety equipment and equipment certificates for ships other than passenger ships.**

(1) If in respect of any Indian ship of five hundred tons gross or more, not being a passenger ship, the Central Government is satisfied that the ship complies with the provisions of this Act and the rules made thereunder relating to life saving and fire appliances and radio telegraphy or radio telephony installation applicable to such ship and is provided with lights and shapes and the means of making fog and distress signals required by the collision regulations, the Central Government may issue in respect of the ship—

(a) where the ship performs voyages between ports or places in India and ports or places outside India, a certificate in the prescribed form to be called a safety equipment certificate;

(b) where the ship performs voyages only between ports or places in India, a certificate in the prescribed form to be called an equipment certificate.

(2) Where in respect of any such ship as is referred to in sub-section (1), there is in force an exemption certificate granted under section 302 and the Central Government is satisfied that the ship complies with all the requirements referred to in that sub-section other than those from which the ship is exempt under that certificate, the Central Government may issue a certificate in the prescribed form to be called a qualified safety equipment certificate or a qualified equipment certificate, as the case may be.

**301. Radio telegraphy and telephony certificates.**

The owner or master of any Indian ship, not being a passenger ship, which is required by the provisions of section 291 to be provided with a radio telegraphy or radio telephony installation shall, if the Central Government is satisfied that the ship complies with all the provisions of this Act and the rules made thereunder relating to radio telegraphy or radio telephony applicable to such ship, receive—

- (a) in the case of a ship performing voyages between ports in India and ports outside India, a certificate in the prescribed form to be called a safety radio telegraphy certificate, or as the case may be, a safety radio telephony certificate;
- (b) in the case of a ship performing voyages only between ports in India, a certificate in the prescribed form to be called a radio telephony certificate, or as the case may be, a radio telephony certificate.

**302. Exemption certificates.**

The owner or master of an Indian ship which is exempt from any of the provisions of the construction rules or of this Act and the rules made thereunder relating to life saving and fire appliances and radio telegraphy or radio telephony installation shall, on application to the officer appointed in this behalf by the Central Government, receive from such officer a certificate in the prescribed form to be called an exemption certificate.

**303. Duration of certificates.**

(1) A safety equipment certificate, a qualified safety equipment certificate, an equipment certificate and a qualified equipment certificate issued under this Part shall be in force for twenty-four months from the date of its issue or for such shorter period as may be specified in the certificate.

(2) Any certificate issued under this Part not specified in sub-section (1) shall be in force for twelve months from the date of its issue or for such shorter period as may be specified in the certificate.

(3) The Central Government or any person authorised by it in this behalf may grant an extension of any certificate issued under this Part in respect of an Indian ship for a period not exceeding one month from the date when the certificate would but for the extension have expired, or if the ship is absent from India on that date, for a period not exceeding five months from that date.

(4) Notwithstanding anything contained in this section a certificate issued under this Part shall not remain in force after notice is given by the authority issuing the certificate to the owner or master of the ship in respect of which it has been issued that that authority has cancelled the certificate.

**304. Modification of safety convention certificates as respects life saving appliances.**

(1) If an Indian ship in respect of which a safety certificate issued under section 299 is in force has on board in the course of a particular voyage a total number of persons less than the number stated in the certificate to be the number for which the life saving appliances on the ship provide, the owner or master of the ship may obtain from the authority issuing the certificate, or any person authorised by the authority for the purpose, a memorandum to be attached to the certificate stating the total number of persons carried on the ship on that voyage, and the modifications which may be made for the purpose of that voyage in the particulars with respect to life saving appliances stated in the certificate.

(2) Where a valid safety convention certificate is produced in respect of a passenger ship other than an Indian ship and there is attached to the certificate a memorandum which—

- (a) has been issued by or under the authority of the Government of the country in which the ship is registered, and

- (b) modifies for the purpose of any particular voyage, in view of the number of persons actually carried on that voyage, the particulars stated in the certificate with respect to life saving appliances,

the certificate shall have effect for the purpose of that voyage as if it were modified in accordance with the memorandum.

### **305. Recognition of certificates issued outside India.**

A valid safety convention certificate issued in respect of a ship other than an Indian ship by the Government of the country to which the ship belongs shall, subject to such rules as the Central Government may make in this behalf, have the same effect in India as the corresponding certificate issued in respect of an Indian ship under this Part.

### **306. Issue of certificates to foreign ships in India and Indian ships in foreign countries.**

(1) The Central Government may, at the request of the Government of a country to which the Safety Convention applies, cause an appropriate safety convention certificate to be issued in respect of a ship registered in that country, if it is satisfied in like manner as in the case of an Indian ship that such certificate can properly be issued, and where a certificate is issued at such a request, it shall contain a statement that it has been so issued.

(2) The Central Government may request the Government of a country to which the Safety Convention applies to issue an appropriate safety convention certificate in respect of an Indian ship and a certificate issued in pursuance of such a request and containing a statement that it has been so issued shall have effect for the purpose of this Act as if it had been issued by the Central Government.

### **307. Prohibition on proceeding to sea without certificates.**

(1) No Indian passenger ship shall proceed on a voyage from any port or place in India to any port or place outside India unless there is in force in respect of the ship either—

(a) a safety certificate issued under section 299; or

(b) a qualified safety certificate issued under section 299 and an exemption certificate issued under section 302;

being a certificate which by the terms thereof is applicable to the voyage on which the ship is about to proceed and to the trade in which she is for the time being engaged.

(2) No sea-going Indian ship, of five hundred tons gross or more, not being a passenger ship, shall proceed on a voyage from any place in India to any place outside India unless there is in force in respect of the ship—

(a) such certificate or certificates as would be required in her case by the provisions of sub-section (1) if she were a passenger ship, or

(b) a safety equipment certificate issued under section 300 and a safety radio telegraphy certificate or, as the case may be, a safety radio telephony certificate issued under section 301, or

(c) a qualified safety equipment certificate issued under section 300 and an exemption certificate issued under section 302 being certificates which by the terms thereof are applicable to the voyage on which the ship is about to proceed and to the trade in which she is for the time being engaged.

(3) No sea-going Indian ship of five hundred tons gross or more, not being a passenger ship, shall proceed on a voyage between ports or places in India unless there is in force in respect of the ship—

(a) an equipment certificate issued under section 300;

(b) a qualified equipment certificate issued under section 300 and an exemption certificate issued under section 302;

(c) a radio telegraphy certificate or a radio telephony certificate issued under section 301 or an exemption certificate issued under section 302;

being a certificate which by the terms thereof is applicable to the voyage on which the ship is about to proceed and to the trade in which she is for the time being engaged.

(4) The master of every ship to which this section applies shall produce to the customs collector from whom a port clearance for the ship is demanded the certificate or certificates required by the foregoing provisions of this section to be in force when the ship proceeds to sea, and the port clearance shall not be granted and the ship may be detained until the said certificate or certificates are so produced.

### **308. Production of certificates by ships other than Indian ships.**

(1) The master of every ship other than an Indian ship being a passenger ship or being a ship of five hundred tons gross or more belonging to a country to which the Safety Convention applies, shall produce a valid safety convention certificate to the customs collector from whom a clearance for the ship is demanded in respect of a voyage from a port or place in India to a port or place outside India and a clearance shall not be granted and the ship may be detained until such a certificate is so produced.

(2) Where a valid safety convention certificate is produced in respect of a ship other than an Indian ship, the ship shall not be deemed to be unsafe for the purpose of section 342 by reason of the defective condition of her hull, equipment or machinery unless it appears that the ship cannot proceed to sea without danger to the passengers or crew owing to the fact that the actual condition of the ship does not correspond substantially with the particulars stated in the certificate.

### **309. Application of certain sections to certificates.**

The provisions of sections 228 to 231 (inclusive) shall apply to and in relation to every certificate issued by the Central Government under sections 299, 300, 301 and 302 in the same manner as they apply to and in relation to a certificate of survey.

#### *Load lines*

### **310. Ships exempt from provisions relating to load lines.**

(1) Save as otherwise provided in this section, the provisions of this Part relating to load lines shall apply to all sailing vessels as they apply to ships, and accordingly, the expression "ship" in the said provisions of this Part shall be construed as including a sailing vessel.

(2) The provisions of this Part relating to load lines shall not apply to—

(a) any sailing vessel of less than one hundred and fifty tons gross employed in plying coastwise between ports situated within India, Pakistan, Burma and Ceylon;

(b) and ship solely engaged in fishing;

(c) any pleasure yacht.

(3) The Central Government may, on such conditions as it may think fit, exempt from the provisions of this Part relating to load lines—

(a) any ship plying between the near neighbouring ports of two or more countries, if the Central Government and the Governments of those countries are satisfied that the sheltered nature and conditions of the voyages between those ports make it unreasonable or impracticable to apply to ships so plying the provisions of this Part relating to load lines;

- (b) any ship plying between near neighbouring ports of the same country, if the Central Government is satisfied as aforesaid;
- (c) wooden ships of primitive build, if the Central Government considers that it would be unreasonable or impracticable to apply the said provisions to them;
- (d) any class of coasting ships of less than one hundred and fifty tons gross which do not carry cargo.

### 311. Power to make rules as to load lines.

The Central Government may, subject to the condition of previous publication, make rules (hereafter in this Act referred to as the load line rules) regulating the survey of ships for the purpose of assignment and marking of load lines and prescribing the conditions (hereafter in this Act referred to as the conditions of assignment) on which load lines may be assigned.

### 312. Marking of deck line and load lines.

(1) No Indian ship, being a ship of which the keel was laid after the 30th day of June, 1932, and not being exempt from the provisions of this Part relating to load lines, shall proceed to sea unless—

- (a) the ship has been surveyed in accordance with the load line rules;
- (b) the ship complies with the conditions of assignment;
- (c) the ship is marked on each side with a mark (hereafter in this Act referred to as a deck line) indicating the position of the uppermost complete deck as defined by the load line rules, and with marks (hereafter in this Act referred to as load lines) indicating the several maximum depths to which the ship can be safely loaded in various circumstances prescribed by the load line rules;
- (d) the deck line and load lines are of the description required by the load line rules, the deck line is in the position required by those rules, and the load lines are of the number required by such of those rules as are applicable to the ship; and
- (e) the load lines are in the position required by such of the load line rules as are applicable to the ship.

(2) No Indian ship, being a ship of which the keel was laid before the 1st day of July, 1932, and not being exempt from the provisions of this Part relating to load lines, shall proceed to sea unless—

- (a) the ship has been surveyed and marked in accordance with clauses (a), (c) and (d) of sub-section (1);
- (b) the ship complies with the conditions of assignment in principle and also in detail so far as, in the opinion of the Central Government, is reasonable and practicable having regard to the efficiency of the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters provided by the arrangements, fittings and appliances existing on the ship at the time when she is first surveyed under this section; and
- (c) the load lines are either in the position required by cl. (e) of sub-section (1) or in the position required by the tables used by the Board of Trade of the United Kingdom on 31-12-1906, for fixing the position of load lines, subject to such modifications of those tables and of the application thereof as were in force immediately before 5-7-1930.

(3) Any ship attempting to proceed to sea without being surveyed and marked as required by this section may be detained until she has been surveyed and marked, and any ship which does not comply with the conditions of assignment to the extent required in her case by this section shall be deemed to be unsafe for the purpose of S. 336.

**313. Submersion of load lines.**

(1) An Indian ship (not being exempt from the provisions of this Part relating to load lines) shall not be so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line indicating or purporting to indicate the maximum depth to which the ship is for the time being entitled under the load line rules to be loaded.

(2) Without prejudice to any other proceedings under this Act, any ship which is loaded in contravention of this section may be detained until she ceases to be so loaded.

**314. Maintenance of load line marks.**

(1) No owner or master of an Indian ship which has been marked in accordance with the foregoing provisions of this Part, shall without reasonable cause, fail to keep the ship so marked.

(2) No person shall conceal, remove, alter, deface or obliterate, or suffer any person under his control to conceal, remove, alter, deface or obliterate any mark placed on any such ship in accordance with the foregoing provisions of this Part except with the authority of a person entitled under the load line rules to authorise the alteration of the mark or except for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

**315. Inspection of ships with respect to load lines.**

A surveyor may inspect any Indian ship for the purpose of seeing that the provisions of this Part relating to load lines have been complied with and for this purpose may go on board the ship at all reasonable times and do all things necessary for the proper inspection of the ship and may also require the master of the ship to supply him with any information which it is in the power of the master to supply for that purpose, including the production of any certificate granted under this Part in respect of the ship.

*Load line certificates.***316. Issue of load line certificates and effect thereof.**

(1) Where an Indian ship has been surveyed and marked in accordance with the foregoing provisions of this Part and complies with the conditions of assignment to the extent required in her case by those provisions, there shall be issued to the owner of the ship on his application and on payment of the prescribed fee,—

(a) in the case of a ship of one hundred and fifty tons gross or more which carries cargo or passengers, a certificate to be called “an international load line certificate”; and

(b) in the case of any other ship, a certificate to be called “an Indian load line certificate.”

(2) Every such certificate shall be issued either by the Central Government or by such other person as may be authorised in that behalf by the Central Government and shall be issued in such form and manner as may be prescribed by the load line rules.

(3) The Central Government may request the Government of a country to which the Load Line Convention applies to issue a load line certificate in the form of an international load line certificate under that Convention in respect of an Indian ship and a certificate issued in pursuance of such a request and containing a statement that it has been so issued shall have effect for the purposes of this Part as if it had been issued by the Central Government.

(4) Where a load line certificate issued in pursuance of this section and for the time being in force, is produced in respect of a ship, the ship shall, for the

purposes of the foregoing provisions of this Part, be deemed to have been surveyed as required by those provisions, and if the deck line and load lines on the ship are of the number and description required by the load line rules and the position of the deck line and load lines corresponds with the position specified in the certificate, the ship shall be deemed to be marked as required by those provisions.

### **317. Duration, renewal and cancellation of certificates.**

(1) Every load line certificate issued by or under the authority of the Central Government, shall, unless it is renewed in accordance with the provisions of sub-section (2), expire at the end of such period, not exceeding five years from the date of its issue, as may be specified therein.

(2) Any such load line certificate may, after a survey not less effective than the survey required by the load line rules before the issue of the certificate, be renewed from time to time by the Central Government or by any person authorised by the Central Government to issue a load line certificate, for such period not exceeding five years on any occasion as the Central Government or the person renewing the certificate thinks fit.

(3) The Central Government may cancel any such load line certificate in force in respect of a ship if it has reason to believe that—

- (a) material alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; or
- (b) the fittings and appliances for the protection of openings, the guard rails, the freeing ports or the means of access to the crew's quarters have not been maintained on the ship in as effective a condition as they were in when the certificate was issued; or
- (c) the marking of the deck line and load lines on the ship have not been properly maintained:

Provided that no such order shall be made unless the person concerned has been given an opportunity of making a representation against the order proposed.

(4) The owner of every ship in respect of which any such certificate has been issued shall, so long as the certificate remains in force, cause the ship to be surveyed in the prescribed manner once at least in each year after the issue of the certificate for the purpose of seeing whether the certificate should, having regard to sub-section (3), remain in force, and if the ship is not so surveyed, the Central Government may cancel the certificate:

Provided that the Central Government, if it thinks fit in any particular case, may extend the said period of one year.

(5) Where any such load line certificate has expired or been cancelled, the Central Government may require the owner or master of the ship to which the certificate relates to deliver up the certificate as it directs and the ship may be detained until such requirement has been complied with.

(6) On the survey of any ship in pursuance of this section there shall be paid by the owner of the ship such fee as may be prescribed.

### **318. Ships not to proceed to sea without certificate.**

(1) No Indian ship shall proceed to sea unless there is in force in respect of the ship a load line certificate issued under the provisions of section 316.

(2) The master of every Indian ship shall produce to the customs collector, from whom a port clearance for the ship is demanded, the certificate which is required by the foregoing provisions of this section to be in force when the ship proceeds to sea, and the port clearance shall not be granted, and the ship may be detained, until that certificate is so produced.



### 319. Publication of load line certificate and particulars relating to depth of loading.

(1) When a load line certificate has been issued in pursuance of the foregoing provisions of this Part in respect of an Indian ship other than a home-trade ship of less than two hundred tons gross—

- (a) the owner of the ship shall forthwith on the receipt of the certificate cause it to be posted up in some conspicuous place on board the ship and to be kept so posted up and legible so long as the certificate remains in force and the ship is in use ; and
- (b) the master of the ship, before making any other entry in any official log book, shall enter or cause to be entered therein the particulars as to the position of the deck line and load lines specified in the certificate.

(2) Before any such ship leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master thereof shall—

- (a) enter or cause to be entered in the official log book such particulars relating to the depth to which the ship is for the time being loaded as the Central Government may by rules made in this behalf prescribe; and
- (b) cause a notice in such form and containing such of the said particulars as may be required by the said rules, to be posted up in some conspicuous place on board the ship and to be kept so posted up and legible until the ship arrives at some other dock, wharf, harbour or place :

Provided that the Central Government may by the said rules exempt home-trade ships or any class of home-trade ships from the requirements of clause (b) of this sub-section.

### 320. Insertion of particulars as to load lines in agreements with the crew.

(1) Before an agreement with the crew of any ship in respect of which a load line certificate is in force, is signed by any member of the crew, the master of the ship shall insert in the agreement the particulars as to the position of the deck line and load lines specified in the certificate.

(2) In the case of a ship required by this Act to engage its crew before a shipping master, the shipping master shall not proceed with the engagement of the crew until—

- (a) there is produced to him a load line certificate for the time being in force in respect of the ship ; and
- (b) he is satisfied that the particulars required by this section have been inserted in the agreement with the crew.

*Special provisions as to ships other than Indian ships.*

### 321. Issue of load line certificates to foreign ships in India and Indian ships in foreign countries.

The Central Government may, at the request of a country to which the Load Line Convention applies, issue an international load line certificate in respect of a ship registered in that country if it is satisfied in like manner as in the case of an Indian ship that it can properly issue the certificate and where the certificate is issued at such a request, it shall contain a statement that it has been so issued.

### 322. Recognition of load line certificates issued outside India.

An international load line certificate issued in respect of any ship other than an Indian ship by the Government of the country to which the ship belongs shall, subject to such rules as the Central Government may make in this behalf, have the same effect in India as a load line certificate issued in respect of an Indian ship under this Part.



### **323. Inspection and control of Load Line Convention ships other than Indian ships.**

(1) A surveyor may, at any reasonable time, go on board any ship other than an Indian ship being a ship of one hundred and fifty tons gross or more carrying cargo or passengers and registered in a country to which the Load Line Convention applies, when such ship is within any port in India, for the purpose of demanding the production of any load line certificate for the time being in force in respect of the ship.

(2) If a valid international load line certificate is produced to the surveyor on any such demand, the surveyor's powers of inspecting the ship with respect to load line shall be limited to seeing—

- (a) that the ship is not loaded beyond the limits allowed by the certificate ;
- (b) that the position of the load lines on the ship corresponds with the position specified in the certificate ;
- (c) that no material alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines ;
- (d) that the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(3) If it is found on any such inspection that the ship is loaded beyond the limits allowed by the certificate, the ship may be detained and the provisions of section 342 shall apply.

(4) If it is found on any such inspection that the load lines on the ship are not in the position specified in the certificate, the ship may be detained until the matter has been rectified to the satisfaction of the surveyor.

(5) If it is found on any such inspection that the ship has been so materially altered in respect of the matters referred to in clauses (c) and (d) of sub-section (2) that the ship is manifestly unfit to proceed to sea without danger to human life, the ship shall be deemed to be unsafe for the purpose of section 336 (in the case of an Indian ship) or for the purpose of section 342 (in the case of any other ship) :

Provided that where the ship has been detained under either of the last-mentioned sub-sections, the Central Government shall order the ship to be released as soon as it is satisfied that the ship is fit to proceed to sea without danger to human life.

(6) If a valid international load line certificate is not produced to the surveyor on such demand as aforesaid the surveyor shall have the same power of inspecting the ship, for the purpose of seeing that the provisions of this Part relating to load lines have been complied with as if the ship were an Indian ship.

(7) For the purposes of this section a ship shall be deemed to be loaded beyond the limits allowed by the certificate if she is so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention, to be loaded.

### **324. Certificate of Load Line Convention ships other than Indian ships to be produced to customs.**

The master of every ship other than an Indian ship, being a ship of one hundred and fifty tons gross or more carrying cargo or passengers, and belonging to a country to which the Load Line Convention applies, shall produce to the customs collector from whom a port clearance for the ship from any port in India is demanded—

- (a) in a case where port clearance is demanded in respect of a voyage to a port outside India, a valid international load line certificate;

(b) in a case where port clearance is demanded in respect of any other voyage, either a valid international load line certificate or a valid Indian load line certificate;

and the port clearance shall not be granted, and the ship may be detained, until the certificate required by this section is so produced.

### **325. Marking of deck line and load lines of ships other than Indian ships.**

The provisions of section 312 shall apply to ships other than Indian ships proceeding or attempting to proceed to sea from ports in India as they apply to Indian ships subject to the following modifications, namely :

- (a) the said section shall not apply to a ship other than an Indian ship if a valid international load line certificate is produced in respect of the ship; and
- (b) subject to the provisions of clause (a), a ship other than an Indian ship which does not comply with the conditions of assignment to the extent required in her case by section 323 shall be deemed to be unsafe for the purpose of section 342.

### **326. Submersion of load line of ships other than Indian ships.**

The provisions of section 313 shall apply to ships other than Indian ships, while they are within any port in India as they apply to Indian ships subject to the following modifications, namely :

- (a) no ship of one hundred and fifty tons gross or more carrying cargo or passengers and belonging to a country to which the Load Line Convention applies, shall be detained and no proceedings shall be taken against the owner or master thereof by virtue of the said section except after an inspection by a surveyor as provided by section 323, and
- (b) the expression "the appropriate load line" in relation to any ship other than an Indian ship shall mean—
  - (i) in the case of a ship in respect of which there is produced on such an inspection as aforesaid a valid international loadline certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention, to be loaded;
  - (ii) in any other case, the load line which corresponds with the load line indicating the maximum depth to which the ship is for the time being entitled under the load line rules to be loaded, or, if no load line on the ship corresponds as aforesaid, the lowest load line thereon.

### **327. Inspection of ships other than Indian ships belonging to non-Convention countries.**

The provisions of section 315 shall apply, in the same manner as they apply to Indian ships, to all ships registered in a country to which the Load Line Convention does not apply while they are within Indian jurisdiction.

### **328. Load line certificates of ships other than Indian ships.**

(1) The provisions of this Part relating to the issue, effect, duration, renewal and cancellation of Indian load line certificates shall apply to ships other than Indian ships as they apply to Indian ships subject to the following modifications, namely :

- (a) any such certificate may be issued in respect of any such ship as in respect of an Indian ship provided that any such certificate issued in respect of a ship of one hundred and fifty tons gross or more carrying cargo or passengers and registered in a country to which the Load Line Convention applies, shall only be valid so long as the ship is not plying on voyages from or to any port in India to or from any place outside India

and shall be endorsed with a statement to that effect and shall be cancelled by the Central Government if it has reason to believe that the ship is so plying; and

(b) the survey required for the purpose of seeing whether the certificate should remain in force shall take place when required by the Central Government.

(g) If the Central Government is satisfied—

(a) that provision has been made for the fixing, marking and certifying of load lines by the law in force in any country outside India with respect to ships (or any class or description of ships) of that country and has also been so made (or has been agreed to be so made) for recognising Indian load line certificates as having the same effect in ports of that country as certificates issued under the said provision, and

(b) that the said provision for the fixing, marking and certifying of load lines is based on the same principles as the corresponding provisions of this Part relating to load lines and is equally effective,

it may, by notification in the Official Gazette, direct that load line certificates issued in pursuance of the said provision or in respect of ships (or that class or description of ships) of that country, shall have the same effect for the purpose of this Part as Indian load line certificates :

Provided that such direction shall not apply to ships of one hundred and fifty tons gross or more carrying cargo or passengers and registered in countries to which the Load Line Convention applies, if such ships are engaged in plying on voyages from or to any port in India to or from any port outside India.

### **329. Certificates to be produced to customs by ships other than Indian ships registered in non-Convention countries.**

The master of every ship registered in a country to which the Load Line Convention does not apply shall produce to the customs collector from whom a port clearance for the ship from any port in India is demanded, either an Indian load line certificate or a certificate having effect under this Act as such a certificate, being a certificate for the time being in force in respect of the ship, and the port clearance shall not be granted and the ship may be detained until the certificate required by this section is so produced.

#### *Loading of timber*

### **330. Power to make rules as to timber cargo.**

(1) The Central Government shall, subject to the condition of previous publication, make rules (hereafter in this section referred to as the timber cargo rules) as to the conditions on which timber may be carried as cargo in any uncovered space on the deck of any Indian ship.

(2) The timber cargo rules may prescribe a special load line to be used only when the ship is carrying timber as cargo on deck and the conditions on which such special load line may be assigned, and may further prescribe either generally or with reference to particular voyages and seasons the manner and position in which such timber is to be stowed and the provisions which are to be made for the safety of the crew.

(3) Any surveyor may at any reasonable time, inspect any Indian ship carrying timber as cargo in any uncovered space on her deck for the purpose of seeing whether the timber cargo rules have been complied with.

(4) The foregoing provisions of this section and the timber cargo rules shall apply to ships other than Indian ships while they are within Indian jurisdiction as they apply to Indian ships.

*Dangerous goods and grain cargoes***331. Carriage of dangerous goods.**

(1) The Central Government may make rules for regulating in the interests of safety the carriage of dangerous goods in ships.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the classification of such goods, the packing, marking and stowing of such goods or any class of goods and the fixing of the maximum quantity of any such class of goods which may be carried in different ships or classes of ships.

(3) The owner, master or agent of a ship carrying or intending to carry any dangerous goods as cargo and about to make a voyage from a port in India shall furnish in advance the prescribed particulars of the ship and the cargo to such authority as may be prescribed for the purpose.

(4) A surveyor may inspect the ship for the purpose of securing that any rules under this section are complied with.

(5) If any of the rules made in pursuance of this section is not complied with in relation to any ship, the ship shall be deemed for the purpose of this Part to be an unsafe ship.

(6) This section shall apply, in the same manner as it applies to Indian ships, to ships other than Indian ships while they are within any port in India or are embarking or disembarking passengers or are loading or discharging cargo or fuel within Indian jurisdiction.

*Explanation.*—In this section the expression “dangerous goods” means goods which by reason of the nature, quantity or mode of stowage are either singly or collectively liable to endanger the life or the health of persons on or near the ship or to imperil the ship, and includes all substances within the meaning of the expression “explosive” as defined in the Indian Explosives Act, 1884, and any other goods which the Central Government may by notification in the Official Gazette specify as dangerous goods but shall not include any fog or distress signals or like equipment required to be carried by the ship under this Act or the rules or regulations thereunder.

**332. Carriage of grain.**

(1) Where grain is loaded on board any Indian ship anywhere or is loaded within any port in India on board any other ship, all necessary and reasonable precautions shall be taken to prevent the grain from shifting; and if such precautions as aforesaid are not taken, the owner or the master of the ship or any agent of the owner who was charged with the loading or with sending the ship to sea laden with grain shall be guilty of an offence under this sub-section and the ship shall be deemed for the purposes of this Part to be unsafe by reason of improper loading.

(2) Where any ship which is loaded with grain outside India without all necessary and reasonable precautions having been taken to prevent the grain from shifting, enters any port in India so laden, the owner or master of the ship shall be guilty of an offence under this sub-section and the ship shall be deemed for the purposes of this Part to be unsafe by reason of improper loading.

(3) On the arrival at a port in India from a port outside India of any ship carrying a cargo of grain, the master shall cause to be delivered at the port to such customs or other officer as may be specified by the Central Government in this behalf, a notice stating—

(a) the draught of water and free board of the said ship after the loading of the cargo was completed at the final port of loading; and

(b) the following particulars of the grain carried, namely:—

(i) the kind of grain and quantity thereof stated in cubic feet, quarters, bushels or tons weight;

- (ii) the mode in which the grain is stowed; and
- (iii) the precautions taken to prevent the grain from shifting.

(4) Any person authorised in this behalf by general or special order of the Central Government may, for securing the observance of the provisions of this section, inspect a ship carrying a cargo of grain and the mode in which such cargo is stowed therein.

(5) The Central Government may, subject to the condition of previous publication, make rules in relation to the loading of ships with grain generally or of ships of any class specifying the precautions to be taken, and when such precautions have been prescribed, they shall be treated for the purposes of this section to be included in the expression "necessary and reasonable precautions".

(6) In this section, the expression "grain" includes wheat, maize, oats, rye, barley, rice, pulses and seeds, and the expression "ship carrying a cargo of grain" means a ship carrying a quantity of grain exceeding one-third of the ship's registered tonnage reckoning one hundred cubic feet or two tons of weight of grain as equivalent to one ton of registered tonnage.

#### *Sub-division load lines*

### **333. Submersion of sub-division load lines in case of passenger ships.**

(1) Where—

- (a) an Indian passenger ship has been marked with sub-division load lines, that is to say, load lines indicating the depth to which the ship may be loaded having regard to the extent to which she is sub-divided and to the space for the time being allotted to passengers, and
- (b) the appropriate sub-division load line, that is to say, the sub-division load line appropriate to the space for the time being allotted to passengers on the ship, is lower than the load line indicating the maximum depth to which the ship is for the time being entitled under the provisions of this Part to be loaded,

the ship shall not be so loaded as to submerge in salt water the appropriate sub-division load line on each side of the ship when the ship has no list.

(2) Without prejudice to any other proceedings under this Act, any such ship which is loaded in contravention of this section may be detained until she ceases to be so loaded.

#### *Unseaworthy ships*

### **334. Unseaworthy ship not to be sent to sea.**

(1) Every person who sends or attempts to send an Indian ship to sea from any port in India in such an unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be guilty of an offence under this sub-section.

(2) Every master of an Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, be guilty of an offence under this sub-section.

(3) For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

(4) No prosecution under this section shall be instituted except by, or with the consent of, the Central Government.

(5) A ship is "unseaworthy" within the meaning of this Act when the materials of which she is made, her construction, the qualifications of the

master, the number, description and qualifications of the crew including officers, the weight, description and stowage of the cargo and ballast, the condition of her hull and equipment, boilers and machinery are not such as to render her in every respect fit for the proposed voyage or service.

### **335. Obligation of owner to crew with respect to seaworthiness.**

(1) In every contract of service, express or implied between the owner of an Indian ship and the master or any seaman thereof, and in every contract of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to ensure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state during the voyage.

(2) For the purpose of seeing that the provisions of this section have been complied with, the Central Government may, either at the request of the owner or otherwise, arrange for a survey of the hull, equipment or machinery of any sea-going ship by a surveyor.

#### *Detention of unsafe ships by the Central Government.*

### **336. Power to detain unsafe ship and procedure for detention.**

(1) Where an Indian ship in any port to which the Central Government may specially extend this section is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipment or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, such ship may be provisionally detained for the purpose of being surveyed and either finally detained or released as follows, namely :—

- (a) The Central Government, if it has reason to believe, on complaint or otherwise, that any such ship is unsafe, may order the ship to be provisionally detained as an unsafe ship for the purpose of being surveyed.
- (b) A written statement of the grounds of such detention shall be forthwith served on the master of such ship.
- (c) When the Central Government provisionally orders the detention of a ship, it shall either refer the matter to the Court of survey for the port where the ship is detained, or forthwith appoint some competent person to survey such ship and report thereon; and, on receiving the report, may either order the ship to be released or if in its opinion the ship is unsafe, may order her to be finally detained, either absolutely or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Central Government thinks necessary for the protection of human life.
- (d) Before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of survey for the port where the ship is detained.
- (e) Where a ship has been provisionally detained and a person has been appointed under this section to survey such ship, the owner or master of the ship, at any time before such person makes that survey, may require that he shall take with him as assessor such person as the owner or master may select, being a person named in the list of assessors for the Court of survey or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical, engineering or other special skill and experience. If the

surveyor and assessor agree that the ship should be detained or released, the Central Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no right of appeal. If the surveyor and assessor differ in their report, the Central Government may act as if the requisition had not been made, and the owner or master shall have a right of such appeal touching the report of the surveyor as is hereinbefore provided in this section.

(f) Where a ship has been provisionally detained, the Central Government may at any time if it thinks it expedient, refer the matter to the Court of survey for the port where the ship is detained.

(g) The Central Government may at any time, if satisfied that a ship detained under this section is not unsafe, order her to be released either upon or without any conditions.

(2) Any person appointed by the Central Government for the purpose (in this Act referred to as a detaining officer) shall have the same power as the Central Government has under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

(3) A detaining officer shall forthwith report to the Central Government any order made by him for the detention or release of a ship.

(4) A ship detained under this section shall not be released by reason of her Indian register being subsequently closed.

*Costs of detention and damages incidental thereto*

**337. Liability of Central Government for costs and damage when ship wrongly detained.**

If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner or the master, for the provisional detention of a ship, the Central Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

**338. Liability of shipowner for costs when ship rightly detained.**

If a ship is finally detained under this Part, or if it appears that a ship provisionally detained was at the time of such detention unsafe, or if a ship is detained in pursuance of any provision of this Part which provides for the detention of a ship until a certain event occurs, the owner of the ship shall be liable to pay to the Central Government its costs of and incidental to the detention and survey of the ship; and the ship shall not be released until such costs are paid.

**339. Method of calculating costs of detention and survey.**

For the purposes of this Act, the costs of and incidental to any proceeding before a Court of survey, and a reasonable amount in respect of the remuneration of the surveyor or any person appointed to represent the Central Government before the Court, shall be deemed to be part of the costs of the detention and survey of the ship.

**340. Power to require from complainant security for costs, etc.**

When a complaint is made to the Central Government or a detaining officer that an Indian ship is unsafe, it shall be in the discretion of the Central Government or the detaining officer, as the case may be, to require the complainant to give security to the satisfaction of the Central Government or the detaining officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned:

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of



the Central Government or the detaining officer frivolous or vexatious, such security shall not be required; and the Central Government or the detaining officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this Part.

**341. Costs, etc., payable by Central Government recoverable from complainant.**

Where a ship is detained in consequence of any complaint and the circumstances are such that the Central Government is liable under this Part to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Central Government all such costs and compensation as the Central Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

**342. Application to ships other than Indian ships of provisions as to detention.**

When a ship other than an Indian ship is in a port in India and is, whilst at that port, unsafe by reason of the defective condition of her hull, equipment or machinery, or by reason of overloading or improper loading, the provisions of this Part with respect to the detention of ships shall apply to that ship as if she were an Indian ship with the following modifications, namely :—

- (a) a copy of the order for the provisional detention of the ship shall forthwith be served on the consular officer for the country to which the ship belongs at or nearest to the port in which such ship is detained ;
- (b) the consular officer, at the request of the owner or master of the ship, may require that the person appointed by the Central Government to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Central Government shall cause the ship, to be detained or released accordingly; but, if they differ, the Central Government may act as if the requisition had not been made, and the owner and master shall have the like right of appeal to a Court of survey touching the report of the surveyor as is hereinbefore provided in the case of an Indian ship; and
- (c) where the owner or master of the ship appeals to the Court of survey, the consular officer, at the request of the owner or master, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were an Indian ship, would be appointed otherwise than by the Central Government.

**343. Exemption of ships from certain provisions of this Part.**

(1) Nothing in this Part—

- (a) prohibiting a ship from proceeding to sea unless there are in force in relation to the ship, or are produced the appropriate certificates issued under this Part or the appropriate safety convention certificates;
  - (b) requiring information about a ship's stability to be carried on board;
- shall, unless in the case of information about a ship's stability the Central Government otherwise orders, apply to any troopship, pleasure yacht or fishing vessel or to any ship of less than five hundred tons gross other than a passenger ship or to any ship not fitted with mechanical means of propulsion.

(2) Nothing in the preceding sub-section shall affect the exemption conferred by any other provision of this Act.

(3) Nothing in this Part shall apply to any ship other than an Indian ship while it is within any port in India if it would not have been within such port but for stress of weather or any other circumstance that neither the master nor the owner nor the charterer, if any, of the ship could have prevented or forestalled.



**344. Power to make rules respecting certificates under this Part.**

(1) The Central Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Part relating to certificates granted under this Part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the form of any certificate issued under this Part;
- (b) the circumstances in which a certificate purporting to have been issued outside India in accordance with the provisions of the Safety Convention or the Load Line Convention shall be recognised in India;
- (c) the fees to be charged in respect of any certificate issued under this Part and the manner in which such fees may be recovered.

**PART X****COLLISIONS, ACCIDENTS AT SEA AND LIMITATION OF LIABILITY****345. Division of loss in case of collision.**

(1) Whenever by the fault of two or more ships damage or loss is caused to one or more of them or to the cargo of one or more of them or to any property on board one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault:

Provided that—

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally;
- (b) nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed;
- (c) nothing in this section shall affect the liability of any person under any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this Part, references to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable in law by way of damages.

**346. Damages for personal injury.**

(1) Whenever loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships concerned shall be joint and several.

(2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

**347. Right of contribution.**

(1) Whenever loss of life or personal injuries are suffered by a person on board a ship owing to the fault of that ship and of any other ship or ships, and a proportion of the damages is recovered from the owner of one of the ships which exceeds the proportion in which she was in fault, the said owner may recover by way of contribution the amount of the excess from the owners of

the other ship or ships to the extent to which those ships were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the person entitled to any contribution under sub-section (1) shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

### **348. Duty of master of ship to assist in case of collision.**

In every case of collision between two ships it shall be the duty of the master or person in charge of each ship, if and so far as he can do so without danger to his own ship, crew and passengers, if any—

(a) to render to the other ship, her master, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger caused by the collision and to stay by the other ship until he has ascertained that she has no need of further assistance, and

(b) to give to the masters or persons in charge of the other ships the name of his own ship and of the port to which she belongs and also the names of the ports from which she comes and to which she is bound.

### **349. Collision to be entered in official log.**

In every case of collision in which it is practicable so to do, the master of every ship concerned shall, immediately after the occurrence, cause a statement thereof and of the circumstances under which the same occurred to be entered in the official log book, if any, and the entry shall be signed by the master and also by the mate or one of the crew.

### **350. Report to Central Government of accidents to ships.**

When a ship has sustained or caused any accident occasioning loss of life or any serious injury to any person or has received any material damage affecting her seaworthiness or her efficiency either in her hull or is so altered in any part of her machinery as not to correspond with the particulars contained in any of the certificates issued under this Act in respect of the ship, the owner or master shall, within twenty-four hours after the happening of the accident or damage or as soon thereafter as possible, transmit to the Central Government or the nearest principal officer a report of the accident or damage and of the probable cause thereof stating the name of the ship, her official number, if any, her port of registry and the place where she is.

### **351. Notice of loss of Indian ship to be given to Central Government.**

If the owner or agent of any Indian ship has reason, owing to the non-appearance of the ship or to any other circumstance, to apprehend that the ship has been wholly lost, he shall, as soon as conveniently may be, send to the Central Government notice in writing of loss and of the probable cause thereof stating the name of the ship, her official number, if any, and her port of registry.

### **352. Limitation of liability of owner for damage.**

(1) The owner of a ship, whether an Indian ship or not, shall not, if any loss of life or personal injury to any person, or any loss of or damage to any property or rights of any kind, whether movable or immovable is caused without his actual fault or privity,—

(a) if no claim for damages in respect of loss of or damage to property or rights arises, be liable for damages in respect of loss of life or personal

injury to an aggregate amount exceeding two hundred rupees for each ton of the ship's tonnage; or

(b) if no claim for damages in respect of loss of life or personal injury arises, be liable for damages in respect of loss of or damage to property or rights to an aggregate amount exceeding one hundred rupees for each ton of the ship's tonnage; or

(c) if claims for damages in respect of loss of life or personal injury and also claims for damages in respect of loss of or damage to property or rights arise, be liable for damages to an aggregate amount exceeding two hundred rupees for each ton of the ship's tonnage:

Provided that in such a case claims for damages in respect of loss of life or personal injury shall, to the extent of an aggregate amount of one hundred rupees for each ton of the ship's tonnage, have priority over claims for damages in respect of loss of or damage to property or rights, and, as regards the balance of the aggregate amount of two hundred rupees for each ton of the ship's tonnage, the unsatisfied portion of the first-mentioned claims shall rank *pari passu* with the last-mentioned claims.

(2) The provisions of this section shall extend and apply to the owners, builders or other persons interested in any ship built at any port or place in India, from and including the launching of such ship until the registration thereof under the provisions of this Act.

(3) The provisions of this section shall apply in respect of claims for damages in respect of loss of life, personal injury and loss of or damage to property or rights arising on any single occasion, and in the application of the said provisions, claims for damages in respect of loss, injury or damage arising out of two or more distinct occasions shall not be combined.

(4) For the purposes of this section a ship's tonnage shall be determined in such manner as the Central Government may by general or special order, specify.

## PART XI NAVIGATION

### **353. Method of giving helm orders.**

No person on any Indian ship shall, when the ship is going ahead, give a helm or steering order containing the word "starboard" or "right" or any equivalent of "starboard" or "right" unless he intends that the head of the ship shall move to the "right" or give a helm or steering order containing the word "port" or "left" or any equivalent of "port" or "left" unless he intends that the head of the ship shall move to the left.

### **354. Duty to report dangers to navigation.**

The master of any Indian ship on meeting with dangerous ice, a dangerous derelict, a tropical storm or any other direct danger to navigation shall send information accordingly by all means of communication at his disposal and in accordance with such rules as the Central Government may make in this behalf to ships in the vicinity and to such authorities on shore as may be prescribed by those rules.

*Explanation.*—For the purpose of this section the expression "tropical storm" means a hurricane, typhoon, cyclone or other storm of a similar nature, and the master of a ship shall be deemed to have met with a tropical storm if he has reason to believe that there is such a storm in the vicinity.

### **355. Obligation to render assistance on receiving signal of distress.**

(1) The master of an Indian ship on receiving at sea a signal of distress or information from any source that a vessel or aircraft is in distress shall

proceed with all speed to the assistance of the persons in distress (informing them if possible that he is doing so) unless he is unable or in the special circumstances of the case considers it unreasonable or unnecessary to do so or unless he is released from such obligation under the provisions of sub-section (3) or sub-section (4).

(2) Where the master of any ship in distress has requisitioned any Indian ship that has answered his call, it shall be the duty of the master of the requisitioned ship to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress unless he is released from the obligation under the provisions of sub-section (4).

(3) The master shall be released from the obligation imposed by sub-section (1) as soon as he is informed of the requisition of one or more ships other than his own and that the requisition is being complied with by the ship or ships requisitioned.

(4) The master shall be released from the obligation imposed by sub-section (1), and if his ship has been requisitioned, from the obligation imposed by sub-section (2), if he is informed by the persons in distress or by the master of any ship that has reached the persons in distress that assistance is no longer required.

(5) If the master of an Indian ship on receiving at sea a signal of distress or information from any source that a vessel or aircraft is in distress is unable or in the special circumstances of the case considers it unreasonable or unnecessary to go to the assistance of the persons in distress, he shall forthwith cause a statement to be entered in the official log book or, if there is no official log book, cause other record to be kept of his reasons for not going to the assistance of those persons.

(6) The master of every Indian ship for which an official log is required shall enter or cause to be entered in the official log book every signal of distress or message that a vessel, aircraft or person is in distress at sea.

### **356. Power to make rules as to signals.**

The Central Government may, subject to the condition of previous publication, make rules prescribing—

- (a) the manner of communicating information regarding dangers to navigation, and the authorities on shore to whom such information is to be communicated;
- (b) the signals which shall be signals of distress and of urgency, respectively;
- (c) the circumstances in which, and the purposes for which, any such signal is to be used, and the circumstances in which it is to be revoked; and
- (d) the speed at which any message sent by radio telegraphy in connection with such signal is to be transmitted.

## **PART XII**

### **INVESTIGATIONS AND INQUIRIES**

#### **357. Definition of "coasts".**

In this Part, the word "coasts" includes the coasts of creeks and tidal rivers.

#### **358. Shipping casualties and report thereof.**

(1) For the purpose of investigations and inquiries under this Part, a shipping casualty shall be deemed to occur when—

- (a) on or near the coasts of India, any ship is lost, abandoned, stranded or materially damaged;
- (b) on or near the coasts of India, any ship causes loss or material damage to any other ship;

- (c) any loss of life ensues by reason of any casualty happening to or on board any ship on or near the coasts of India;
- (d) in any place, any such loss, abandonment, stranding, material damage or casualty as above mentioned occurs to or on board any Indian ship, and any competent witness thereof is found in India;
- (e) any Indian ship is lost or is supposed to have been lost, and any evidence is obtainable in India as to the circumstances under which she proceeded to sea or was last heard of.

(2) In the cases mentioned in clauses (a), (b) and (c) of sub-section (1), the master, pilot, harbour master or other person in charge of the ship, or (where two ships are concerned) in charge of each ship at the time of the shipping casualty, and

in the cases mentioned in clause (d) of sub-section (1), where the master of the ship concerned or (except in the case of a loss) where the ship concerned proceeds to any place in India from the place where the shipping casualty has occurred, the master of the ship,

shall, on arriving in India, give immediate notice of the shipping casualty to the officer appointed in this behalf by the Central Government.

### **359. Report of shipping casualties to Central Government.**

(1) Whenever any such officer as is referred to in sub-section (2) of section 358 receives credible information that a shipping casualty has occurred, he shall forthwith report in writing the information to the Central Government; and may proceed to make a preliminary inquiry into the casualty.

(2) An officer making a preliminary inquiry under sub-section (1) shall send a report thereof to the Central Government or such other authority as may be appointed by it in this behalf.

### **360. Application to Court for formal investigation.**

The officer appointed under sub-section (2) of section 358, whether he has made a preliminary inquiry or not, may, and, where the Central Government so directs, shall make an application to a Court empowered under section 361, requesting it to make a formal investigation into any shipping casualty, and the Court shall thereupon make such investigation.

### **361. Court empowered to make formal investigation.**

A magistrate of the first class specially empowered in this behalf by the Central Government and a presidency magistrate shall have jurisdiction to make formal investigations into shipping casualties under this Part.

### **362. Power of Court of investigation to inquire into charges against masters, mates and engineers.**

(1) Any Court making a formal investigation into a shipping casualty may inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing the shipping casualty.

(2) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, arises against any master, mate or engineer, in the course of an investigation, the Court shall, before the commencement of the inquiry, cause to be furnished to him a statement of the case upon which the inquiry has been directed.

#### **Section 361 — Note 1**

[1] The tribunal set up under the Merchant Shipping Act is a judicial or a quasi-judicial tribunal which would attract the application of Art. 227 of the Constitution and in respect

of which the jurisdiction of the High Court can be invoked under that article. 1955 Bom 241 (249) [(S) A I R V 42 C 61] : I L R (1955) Bom 443 : 1955 Cri L Jour 1039 (DB).

### **363. Power of Central Government to direct inquiry into charges of incompetency or misconduct.**

(1) If the Central Government has reason to believe that there are grounds for charging any master, mate or engineer with incompetency or misconduct, otherwise than in the course of a formal investigation into shipping casualty, the Central Government,—

- (a) if the master, mate or engineer holds a certificate under this Act, in any case;
- (b) if the master, mate or engineer holds a certificate under the law of any country outside India, in any case where the incompetency or misconduct has occurred on board an Indian ship;

may transmit a statement of the case to any Court having jurisdiction under section 361, which is at or nearest to the place where it may be convenient for the parties and witnesses to attend, and may direct that Court to make an inquiry into that charge.

(2) Before commencing the inquiry, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Central Government.

### **364. Opportunity to be given to person to make defence.**

For the purpose of any inquiry under this Part into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him an opportunity of making a defence either in person or otherwise.

### **365. Power of Court as to evidence and regulation of proceedings.**

For the purpose of any investigation or inquiry under this Part, the Court making the investigation or inquiry shall, in respect of compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, have the same powers as are exercisable by that Court in the exercise of its criminal jurisdiction.

### **366. Assessors.**

(1) A Court making a formal investigation shall constitute as its assessors not less than two and not more than four persons, of whom one shall be a person conversant with maritime affairs and the other or others shall be conversant with either maritime or mercantile affairs:

Provided that, where the investigation involves, or appears likely to involve, any question as to the cancellation or suspension of the certificate of a master, mate or engineer, two of the assessors shall be persons having also experience in the merchant service.

(2) The assessors shall attend during the investigation and deliver their opinions in writing, to be recorded on the proceedings, but the exercise of all powers conferred on the Court by this Part or any other law for the time being in force shall rest with the Court.

(3) The assessors shall be chosen from a list to be prepared from time to time by the Central Government.

#### **Section 365 — Note 1**

[1] Where in a formal investigation held by the Court under the Merchant Shipping Act into the shipping casualty, resulting in loss of cargo, the insurance companies with whom the cargo was issued made an application to the Court to be made parties to the proceedings so that they might be able to lead evidence which was in their possession and the Court rejected the application on the ground that it had discretion in the matter in regulating the proceedings and that Instruction 4

of the Instructions issued by the Government with regard to formal investigations gave it the widest discretion to decide whether the insurance companies were parties to the proceedings: *Held* that the order of the Court could not be looked upon as exercise of discretion and that the matter must go back to the Court to exercise its discretion as best as it thought fit. 1955 Bom 241 (247, 248) [(S) A I R V 42 C 61] : ILR (1955) Bom 443 : 1955 Cri L Jour 1039 (DB).

**367. Power to arrest witnesses and enter ships.**

If any Court making an investigation or inquiry under this Part thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorise any officer, subject, nevertheless, to any general or special instructions from the Central Government, to enter any vessel, and any officer so authorised may, for the purpose of enforcing the entry, call to his aid any officer of police or customs or any other person.

**368. Power to commit for trial and bind over witnesses.**

Whenever, in the course of any such investigation or inquiry, it appears that any person has committed in India an offence punishable under any law in force in India, the Court making the investigation or inquiry may (subject to such rules consistent with this Act as the High Court may from time to time make) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court, and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all its powers as a criminal Court.

**369. Report by Court to Central Government.**

(1) The Court shall, in the case of all investigations or inquiries under this Part, transmit to the Central Government a full report of the conclusions at which it has arrived together with the evidence.

(2) Where the investigation or inquiry affects a master or an officer of a ship other than an Indian ship who holds a certificate under the law of any country outside India, the Central Government may transmit a copy of the report together with the evidence to the proper authority in that country.

**370. Powers of Court as to certificates granted by Central Government.**

(1) A certificate of a master, mate or engineer which has been granted by the Central Government under this Act may be cancelled or suspended—

(a) by a Court holding a formal investigation into a shipping casualty under this Part if the Court finds that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by the wrongful act or default of such master, mate or engineer;

(b) by a Court holding an inquiry under this Part into the conduct of the master, mate or engineer if the Court finds that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct or in a case of collision has failed to render such assistance or give such information as is required by section 348.

(2) At the conclusion of the investigation or inquiry, or as soon thereafter as possible, the Court shall state in open sitting the decision to which it may have come with respect to the cancellation or suspension of any certificate and, if suspension is ordered, the period for which the certificate is suspended.

(3) Where the Court cancels or suspends a certificate, the Court shall forward it to the Central Government together with the report which it is required by this Part to transmit to it.

**371. Power of court to censure master, mate or engineer.**

Where it appears to the court holding an investigation or inquiry that having regard to the circumstances of the case an order of cancellation or suspension under section 370 is not justified, the court may pass an order censuring the master, mate or engineer in respect of his conduct.

**372. Power of court to remove master and appoint new master.**

(1) A magistrate of the first class specially empowered in this behalf by the Central Government or a presidency magistrate, may remove the master of any

ship within his jurisdiction if the removal is shown to his satisfaction to be necessary.

(2) The removal may be made upon the application of the owner of any ship or his agent, or of the consignee of the ship, or of any certificated officer or of one-third or more of the crew of the ship.

(3) The magistrate may appoint a new master instead of the one removed, but where the owner, agent or consignee of the ship is within his jurisdiction, such an appointment shall not be made without the consent of that owner, agent or consignee.

(4) The magistrate may also make such order and require such security in respect of the cost of the matter as he thinks fit.

#### *Marine Board*

### **373. Convening of Marine Boards outside India.**

Whenever—

- (a) a complaint is made to an Indian consular officer or a senior officer of any ship of the Indian Navy in the vicinity (hereinafter referred to as naval officer) by the master or any member of the crew of an Indian ship and such complaint appears to the Indian consular officer or naval officer, as the case may be, to require immediate investigation ; or
- (b) the interest of the owner of an Indian ship or of the cargo thereof appears to an Indian consular officer or naval officer, as the case may be, to require it ; or
- (c) an allegation of incompetency or misconduct is made to an Indian consular officer or a naval officer against the master or any of the officers of an Indian ship ; or
- (d) any Indian ship is lost, abandoned or stranded at or near the place where an Indian consular officer or naval officer may be or whenever the crew or part of the crew of any Indian ship which has been lost abandoned or stranded arrives at that place ; or
- (e) any loss of life or any serious injury to any person has occurred on board an Indian ship at or near that place ;

the Indian consular officer or the naval officer, as the case may be, may, in his discretion, convene a Board of Marine Inquiry to investigate the said complaint or allegation or the matter affecting the said interest or the cause of the loss, abandonment or the stranding of the ship or of the loss of life or of the injury to the person.

### **374. Constitution and procedure of Marine Board.**

(1) A Marine Board shall consist of the officer convening the Board and two other members.

(2) The two other members of the Marine Board shall be appointed by the officer convening the Marine Board from among persons conversant with maritime or mercantile affairs.

(3) The officer convening the Marine Board shall be the presiding officer thereof.

(4) A Marine Board shall, subject to the provisions of this Act, have power to regulate its own procedure.

### **375. Decisions of Marine Board to be by majority.**

Where there is a difference of opinion among members of the Marine Board, the decision of the majority of the members shall be the decision of the Board.



**376. Powers of Marine Board.**

(1) A Marine Board may, after investigating and hearing the case—

- (a) if it is of opinion that the safety of an Indian ship or her cargo or crew or the interest of the owner of an Indian ship or of the owner of the cargo thereof requires it, remove the master and appoint another qualified person to act in his stead ;
- (b) if it is of opinion that any master or officer of an Indian ship is incompetent or has been guilty of any act of misconduct or in a case of collision has failed to render such assistance or give such information as is required by section 348 or that loss, abandonment or stranding of or serious damage to any ship, or loss of life or serious injury to any person has been caused by the wrongful act or default of any master or ship's officer of an Indian ship, suspend the certificate of that master or ship's officer for a stated period :

Provided that no such certificate shall be suspended unless the master or officer concerned has been furnished with a statement of the case in respect of which investigation has been ordered and he has also been given an opportunity of making a defence either in person or otherwise;

- (c) discharge a seaman from an Indian ship and order the wages of any seaman so discharged or any part of those wages to be forfeited ;
  - (d) decide any questions as to wages, fines or forfeitures arising between any of the parties to the proceedings ;
  - (e) direct that any or all of the costs incurred by the master or owner of an Indian ship or on the maintenance of a seaman or apprentice while in prison outside India shall be paid out of, and deducted from, the wages of that seaman or apprentice, whether earned or subsequently earned ;
  - (f) if it considers such a step expedient, order a survey to be made of any Indian ship which is the subject of investigation ;
  - (g) order the costs of proceedings before it or any part of those costs, to be paid by any of the parties thereto, and may order any person making a frivolous or unjustified complaint to pay compensation for any loss or delay caused thereby ; and any costs or compensation so ordered to be paid by any person shall be paid by that person accordingly and may be recovered in the same manner in which wages of seaman are recoverable or may be deducted from the wages due to that person.
- (2) All orders made by a Marine Board shall, whenever practicable, be entered in the official log book of the ship which is the subject of investigation or on board which the casualty or occurrence or conduct investigated took place, and be signed by the presiding officer of the Board.

*Miscellaneous provisions relating to cancellation and  
suspension of certificates*

**377. Powers of Central Government to cancel, suspend, etc., certificate of master, mate or engineer.**

(1) Any certificate which has been granted by the Central Government under this Act to any master, mate or engineer, may be cancelled or suspended for any specified period, by the Central Government in the following cases, that is to say,—

- (a) if, on any investigation or inquiry made by any Court, tribunal or other authority for the time being authorised by the legislative authority in any country outside India, the Court, tribunal or other authority reports that the master, mate or engineer is incompetent or has been guilty of any gross act of misconduct, drunkenness or tyranny, or in a case of collision has failed to render assistance, or to give such information as is referred to in section 348, or that the loss, stranding or abandonment of, or

damage to, any ship or loss of life has been caused by his wrongful act or default;

(b) if the master, mate or engineer is proved to have been convicted—

(i) of any offence under this Act or of any non-bailable offence committed under any other law for the time being in force in India; or

(ii) of an offence committed outside India which, if committed in India, would be a non-bailable offence;

(c) if (in the case of a master of an Indian ship) he has been superseded by the order of any Court of competent jurisdiction in India or outside India.

(2) The Central Government may at any time, if it thinks the justice of the case so requires,—

(a) revoke any order of cancellation or suspension made by it under sub-section (1) or set aside any order of cancellation or suspension made by a Court under section 370 or any order of suspension made by a Marine Board under clause (b) of sub-section (1) of section 376 or any order of censure made by a Court under section 371; or

(b) shorten or lengthen the period of suspension ordered by it under sub-section (1) or by a Court under section 370 or by a Marine Board under clause (b) of sub-section (1) of section 376 or cancel a certificate suspended by a Marine Board under that clause; or

(c) grant without examination a new certificate of the same or any lower grade in the case of any certificate cancelled or suspended by it under sub-section (1) or by a Court under section 370 or any certificate suspended by a Marine Board under clause (b) of sub-section (1) of section 376 :

Provided that no order under clause (b) either lengthening the period of suspension of or cancelling a certificate shall be passed by the Central Government unless the person concerned has been given an opportunity of making a representation against the order proposed.

(3) A certificate granted under clause (c) of sub-section (2) shall have the same effect as if it had been granted after examination.

### **378. Delivery of Indian certificate cancelled or suspended.**

A master of ship's officer who is the holder of a certificate issued under this Act shall, if such certificate has been cancelled or suspended by the Central Government or by a Court or suspended by a Marine Board, deliver his certificate to the Central Government, Court or Marine Board on demand or if it is not so demanded by the Central Government or Court or Board, to the Director-General.

### **379. Effect of cancellation or suspension of certificate.**

The cancellation or suspension of a certificate by the Central Government or by a Court or the suspension of a certificate by a Marine Board, shall—

(a) if the certificate was issued under this Act, be effective everywhere and in respect of all ships; and

(b) if the certificate was issued outside India, be effective—

(i) within India and the territorial waters of India, in respect of all ships; and

(ii) outside India, in respect of Indian ships only.

### **380. Suspended certificate not to be endorsed.**

If the certificate of a master or ship's officer is suspended under this Part by the Central Government or by a Court or a Marine Board, no endorsement shall be made to that effect on the said certificate.

**381. Power of Central Government to cancel or suspend other certificates.**

Notwithstanding anything contained in this Act, the Central Government may, at any time, without any formal investigation or inquiry, cancel or suspend any certificate granted by it under this Act, other than a certificate granted to a master, mate or engineer, if, in its opinion, the holder is, or has become, unfit to act in the grade for which the certificate was granted to him :

Provided that no order under this section shall be passed by the Central Government unless the person concerned has been given an opportunity of making a representation against the order proposed.

*Re-hearing of cases***382. Re-hearing.**

(1) Whenever an investigation or inquiry has been held by a Court or by a Marine Board under this Part, the Central Government may order the case to be re-heard either generally or as to any part thereof, and shall so order—

- (a) if new and important evidence which could not be produced at the investigation has been discovered, or
- (b) if for any other reason there has, in its opinion, been a miscarriage of justice.

(2) The Central Government may order the case to be reheard by the Court or Marine Board, as the case may be, consisting of the same members or other members as the Central Government may deem fit.

*Courts of survey***383. Constitution of Court of survey.**

(1) A Court of survey for a port shall consist of a judge sitting with two assessors.

(2) The judge shall be a district judge, judge of a Court of small causes, presidency magistrate, magistrate of the first class or other fit person appointed in this behalf by the Central Government either generally or for any specified case.

(3) The assessors shall be persons of nautical, engineering or other special skill or experience.

(4) Subject to the provisions of Part IX as regards ships other than Indian ships, one of the assessors shall be appointed by the Central Government either generally or in each case and the other shall be summoned by the judge in the manner prescribed out of a list of persons from time to time prepared for the purpose by the Central Government or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the judge.

**384. Appeal from surveyor to Court of survey.**

(1) If a surveyor authorised to inspect a ship—

- (a) makes a statement in his report of inspection with which the owner or his agent or the master of the ship is dissatisfied, or
- (b) gives notice under this Act of any defect in any ship, or
- (c) declines to give any certificate under this Act,

the owner, master or agent, as the case may be, may, subject to the provisions of sub-section (2) and of section 387, appeal to a Court of survey.

(2) Whenever a surveyor inspects any ship, he shall, if the owner, master or agent of the ship so requires, be accompanied on the inspection by some person nominated by the owner, master or agent, as the case may be, and if the person so nominated agrees with the surveyor as to the statement made or the notice given by the surveyor or the refusal by the surveyor to give a certificate, there shall be no appeal to a Court of survey from that statement, notice or refusal.

**385. Powers and procedure of Court of survey.**

(1) The judge shall on receiving notice of appeal or a reference from the Central Government immediately summon the assessors to meet forthwith in the prescribed manner.

(2) The Court of survey shall hear every case in open Court.

(3) The judge may appoint any competent person to survey the ship and report thereon to the Court.

(4) The judge shall have the same powers as the Central Government has to order the ship to be released or finally detained; but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(5) The owner and master of the ship and any person appointed by the owner or master and also any person appointed by the Central Government may attend any inspection or survey made in pursuance of this section.

(6) The judge shall report the proceedings of the Court in each case to the Central Government in the manner prescribed and each assessor shall either sign such report or report to the Central Government the reasons for his dissent.

**386. Power to make rules.**

The Central Government may make rules for carrying out the purposes of this Part with respect to a Court of survey and in particular, and without prejudice to the generality of the foregoing power, with respect to—

(a) the procedure of the Court;

(b) the requiring, on an appeal, of security for costs and damages;

(c) the amount and application of fees; and

(d) the ascertainment, in case of dispute, of the proper amount of costs.

*Scientific referees***387. Reference in difficult cases to scientific persons.**

(1) If the Central Government is of opinion that an appeal to a Court of survey involves a question of construction or design or a scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees to be from time to time prepared by the Central Government as may appear to possess the special qualifications necessary for the particular case and may be selected by agreement between a person duly appointed by the Central Government in this behalf and the appellant, or in default of any such agreement, by the Central Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of survey.

(2) The Central Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

(3) The referee or referees shall have the same powers as a judge of the Court of survey.

*Investigations into explosions or fires on board ships***388. Power to investigate causes of explosion or fire on board ship.**

Whenever any explosion or fire occurs on board any ship on or near the coasts of India, the Central Government may direct that an investigation into the causes of explosion or fire be made by such person or persons as it thinks fit.

**389. Report to be made regarding cause of explosion or fire.**

The person or persons referred to in S. 388 may go on board the ship on which the explosion or fire has occurred with all necessary workmen and labourers, and remove any portion of the ship, or of the machinery thereof, for the purpose of the investigation, and shall report to the Central Government or the person duly appointed by it, as the case may be, what in his or their opinion was the cause of the explosion or fire.

## PART XIII

## WRECK AND SALVAGE

*Wreck***390. Definition of "coasts."**

In this Part, the word "coasts" includes the coasts of creeks and tidal rivers.

**391. Receivers of wreck.**

(1) The Central Government may, by notification in the Official Gazette, appoint any person to be a receiver of wreck (in this Part referred to as receiver of wreck) to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as may be specified in the notification.

(2) A receiver of wreck may, by order in writing, direct that all or any of his functions under this Part shall, in such circumstances and subject to such conditions, if any, as may be specified in the order, be discharged by such person as may be specified therein and any person while discharging any such functions shall be deemed to be a receiver of wreck for the purposes of this Act.

**392. Duty of receiver where vessel is in distress.**

Where any vessel is wrecked, stranded or in distress at any place on or near the coasts of India, the receiver of wreck, within the limits of whose jurisdiction the place is situate shall, upon being made acquainted with the circumstance, forthwith proceed there, and upon his arrival shall take command of all persons present and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the persons belonging to the vessel and of its cargo and equipment :

Provided that the receiver shall not interfere between the master and the crew of the vessel in reference to the management thereof unless he is requested to do so by the master.

**393. Power to pass over adjoining lands.**

(1) Whenever a vessel is wrecked, stranded or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the vessel or of saving the lives of the shipwrecked persons, or of saving the cargo or equipment of the vessel, unless there is some public road equally convenient, pass and repass, either with or without vehicles or animals, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible and may also on the like condition, deposit on these lands any cargo or other article recovered from the ship.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section, shall be a charge on the vessel, cargo or articles in respect of or by which the damage is occasioned and the amount payable in respect of the damage shall, in case of dispute, be determined by a magistrate on application made to him in this behalf.

**394. Power of receiver of wreck to suppress, plunder and disorder by force.**

Whenever a vessel is wrecked, stranded or in distress as aforesaid, and any person plunders, creates disorder or obstructs the preservation of the vessel or of the shipwrecked persons or of the cargo or equipment of the vessel, the receiver of wreck may take such steps and use such force as he may consider necessary for the suppression of any such plundering, disorder or obstruction, and may for that purpose command any person to assist him.

**395. Procedure to be observed by persons finding wreck.**

Any person finding and taking possession of any wreck within any local limits for which there is a receiver of wreck, or bringing within such limits any wreck which has been found and taken possession of elsewhere, shall, as soon as practicable—

- (a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;
- (b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

**396. Investigation of certain matters in respect of vessels wrecked, etc.**

Whenever any vessel is wrecked, stranded or in distress as aforesaid, the receiver of wreck within the local limits of whose jurisdiction the vessel is wrecked, stranded or in distress may conduct an investigation into all or any of the following matters, that is to say,—

- (a) the name and description of the vessel;
- (b) the names of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the ports from and to which the vessel was bound;
- (e) the occasion of the wrecking, stranding, or distress of the vessel;
- (f) the services rendered; and
- (g) such other matters or circumstances relating to the vessel, the cargo or the equipment, as the receiver thinks necessary.

**397. Notice to be given by receiver.**

The receiver of wreck shall as soon as may be after taking possession of any wreck, publish a notification in such manner and at such place as the Central Government may, by general or special order, direct, containing a description of the wreck and the time at which and the place where it was found.

**398. Immediate sale of wreck by receiver in certain cases.**

A receiver of wreck may at any time sell any wreck in his custody if, in his opinion,—

- (a) it is under the value of five hundred rupees; or
- (b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) it is not of sufficient value for warehousing;

and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

**399. Claims of owners to wreck.**

(1) The owner of any wreck in the possession of the receiver upon establishing his claim to the same to the satisfaction of the receiver within one year from the time at which the wreck came into the possession of the receiver shall, upon paying the salvage and other charges, be entitled to have the wreck or the proceeds thereof delivered to him.

(2) Where any articles belonging to or forming part of a vessel other than an Indian vessel which has been wrecked or belonging to and forming part of the cargo of such vessel, are found on or near the coasts of India or are brought into any port in India, the consular officer of the country in which the vessel is

**Section 395 — Note 1**

[1] Planks washed away by low tide from person's timber yard recovered before they reached sea — Taking possession of same by him without notice to receiver of wrecks is no offence. 1941 Mad 832 (833) [AIR V 28].

registered or, in the case of cargo, the country to which the owners of the cargo may have belonged shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner, with respect to the custody and disposal of the articles.

(3) Where the owner of the wreck does not appear and claim the balance of the proceeds of sale within one year from the date of sale, the said balance shall become the property of the Central Government.

#### **400. Prohibition of certain acts in respect of wreck.**

No person shall—

- (a) without the leave of the master board or attempt to board any vessel which is wrecked, stranded or in distress as aforesaid, unless the person is, or acts by command of, the receiver of wreck; or
- (b) impede or hinder or attempt in any way to impede or hinder the saving of any vessel stranded or in danger of being stranded or otherwise in distress on or near the coasts of India or of any part of the cargo or equipment of the vessel, or of any wreck; or
- (c) secrete any wreck or deface or obliterate any marks thereon; or
- (d) wrongfully carry away or remove any part of a vessel stranded or in danger of being stranded or otherwise in distress, on or near the coasts of India, or any part of the cargo or equipment of the vessel or any wreck.

#### **401. Search warrants where wreck is involved.**

Where a receiver of wreck suspects or receives information that any wreck is secreted or is in the possession of some person who is not the owner thereof or that any wreck is otherwise improperly dealt with, he may apply to the nearest magistrate for a search warrant, and that magistrate shall have power to grant such warrant and the receiver of wreck by virtue thereof may enter any house or other place wherever situate and also any vessel and search for, seize and detain any such wreck there found.

#### *Salvage*

#### **402. Salvage payable for saving life, cargo or wreck.**

(1) Where services are rendered—

- (a) wholly or in part within the territorial waters of India in saving life from any vessel, or elsewhere in saving life from a vessel registered in India; or
- (b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coasts of India; or
- (c) by any person other than the receiver of wreck in saving any wreck;

there shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

(3) Where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or the commander or crew of any such vessel, the Government, the commander or the crew, as the case may be, shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

(4) Any dispute arising concerning the amount due under this section shall be determined upon application made by either of the disputing parties—

- (a) to a magistrate, where the amount claimed does not exceed ten thousand rupees; or

(b) to the High Court, where the amount claimed exceeds ten thousand rupees.

(c) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the magistrate or the High Court, as the case may be, shall decide the dispute and if there are more persons than one entitled to such amount, the magistrate or the High Court shall apportion the amount thereof among such persons.

(d) The costs of and incidental to all proceedings before a magistrate or the High Court under this section shall be in the discretion of the magistrate or the High Court, and the magistrate or the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

#### **403. Savings.**

Nothing in this Part shall—

- (a) affect any treaty or arrangement with any foreign country to which India is a party with reference to the disposal of the proceeds of wrecks on their respective coasts; or
- (b) affect the provisions of section 29 of the Indian Ports Act, 1908, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

#### **404. Power to make rules respecting wreck and salvage.**

(1) The Central Government may make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the procedure to be followed by a receiver of wreck in respect of the taking possession of wrecks and their disposal;
- (b) the fees payable to receivers in respect of the work done by them;
- (c) the procedure to be followed for dealing with claims relating to ownership of wrecks;
- (d) the appointment of valuers in salvage cases;
- (e) the principles to be followed in awarding salvage and the apportioning of salvage;
- (f) the procedure to be followed for dealing with claims for salvage;
- (g) the detention of property in the custody of a receiver of wreck for the purpose of enforcing payment of salvage.

### **PART XIV\***

#### **CONTROL OF INDIAN SHIPS AND SHIPS ENGAGED IN COASTING TRADE**

#### **405. Application of Part.**

This Part applies only to sea-going ships fitted with mechanical means of propulsion of not less than one hundred and fifty tons gross; but the Central Government may, by notification in the Official Gazette, fix any lower tonnage for the purposes of this Part.

[a] Part XIV, containing sections 405 to 414 (both inclusive) came into force on 1st April, 1960 — See S. O. 565 dated 28.2.1960 published in Gaz. of Ind., 1960, Pt. II-Sec. 3 (ii), page 886.

#### **406. Indian ships and chartered ships to be licensed.**

(1) No Indian ship and no other ship chartered by a citizen of India or a company shall be taken to sea from a port or place within or outside India except under a licence granted by the Director General under this section :

Provided that the Central Government, if it is of opinion that it is necessary or expedient in the public interest so to do, may, by notification in the Official



**Gazette**, exempt any class of ships chartered by a citizen of India or a company from the provisions of this sub-section.

(2) A licence granted under this section may be—

(a) a general licence;

(b) a licence for the whole or any part of the coasting trade of India; or

(c) a licence for a specified period or voyage.

(3) A licence granted under this section shall be in such form and shall be valid for such period as may be prescribed, and shall be subject to such conditions as may be specified by the Director-General.

#### **407. Licensing of ships for coasting trade.**

(1) No ship other than an Indian ship or a ship chartered by a citizen of India or a company which satisfies the requirements specified in clause (b) of section 21, shall engage in the coasting trade of India except under a licence granted by the Director-General under this section.

(2) A licence granted under this section may be for a specified period or voyage and shall be subject to such conditions as may be specified by the Director-General.

(3) The Central Government may, by general or special order, direct that the provisions of sub-section (1) shall not apply in respect of any part of the coasting trade of India or shall apply subject to such conditions and restrictions as may be specified in the order.

#### **408. Revocation or modification of licence.**

(1) The Director-General may, at any time if the circumstances of the case so require, revoke or modify a licence granted under section 406 or section 407.

(2) No licence shall be revoked or modified under this section unless the person concerned has been given a reasonable opportunity of making a representation against such revocation or modification, as the case may be.

#### **409. Licences to be surrendered when they cease to be valid.**

When a licence under section 406 or section 407 ceases to be valid, the person to whom it was granted shall, without unreasonable delay, return it or cause it to be returned to the Director-General.

#### **410. No port clearance until licence is produced.**

No customs collector shall grant a port clearance to a ship in respect of which a licence is required under this Part until after production by the owner, master or agent of such a licence.

#### **411. Power to give directions.**

The Director-General may, if he is satisfied that in the public interest or in the interests of Indian shipping it is necessary so to do, give, by order in writing, such directions as he thinks fit—

(a) in the case of a ship which has been granted a licence under section 406, with respect to all or any of the following matters:—

(i) the ports or places, whether in or outside India, to which, and the routes by which, the ship shall proceed for any particular purpose;

(ii) the diversion of any ship from one route to another for any particular purpose;

(iii) the classes of passengers or cargo which may be carried in the ship;

(iv) the order of priority in which passengers or cargo may be taken on or put off the ship at any port or place, whether in or outside India;

(b) in the case of a ship which has been granted a licence under section 407 with respect to the order of priority in which passengers or cargo may be

taken on the ship at any port or place in India from which she is about to proceed for any port or place on the continent of India at which she is to call in the course of her voyage.

#### **412. Power to fix shipping rates.**

(1) The Central Government may, by order published in the Official Gazette, fix in the prescribed manner the rates at which any Indian ship may be hired and the rates which may be charged for the carriage of passengers or cargo by any ship engaged in the coasting trade of India.

(2) If the Central Government considers that with a view to enabling it to fix the rates under sub-section (1) it is necessary or expedient so to do, it may constitute a Board in the prescribed manner for the purpose of advising it; and such Board may be constituted either generally or for a particular case or route or in respect of rates for the carriage of passengers or cargo or both.

(3) Where an order fixing the rates to be charged for hire or for the carriage of passengers or cargo has been published under sub-section (1), no owner, master or agent of a ship shall charge rates exceeding the rates so fixed.

#### **413. Power of Director-General to call for information.**

The Director-General may, by notice, require—

- (a) the owner, master or agent of any ship in respect of which a licence granted by the Director-General under this Act is in force ; or
- (b) the owner, master or agent of any ship in respect of which any directions have been or may be given under clause (b) of section 411 ;  
to furnish within the period specified in the notice information as to—
  - (i) the classes of passengers and cargo which the ship is about to carry or is capable of carrying or has carried during any specified period ;
  - (ii) the rates of passenger fares and freight charges applicable to the ship ;
  - (iii) any other matter which may be prescribed.

#### **414. Power to make rules.**

(1) The Central Government may make rules<sup>a</sup> for carrying out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the form in which, the period or voyage for which, and the conditions subject to which licences under this Part may be granted, the particulars to be included therein and the fees payable therefor ;
- (b) the manner in which rates shall be fixed under section 412 ;
- (c) the constitution and functions of a Board constituted under section 412 and the procedure to be followed by it in the discharge of its functions ;
- (d) the matters regarding which information may be required to be furnished under section 413.

[a] For the Merchant Shipping (Forms of Licences) Rules, 1960, superseding the Control of Shipping (Forms of Licences) Rules, 1949, *see* G. S. R. 280 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-S. 3 (i), page 421.

### **PART XV SAILING VESSELS**

#### **415. Application of Part.**

Save as otherwise provided, this Part applies to every sea-going sailing vessel owned by a citizen of India or a company which satisfies the requirements specified in clause (b) of section 21.

**416. Decision of question whether a vessel is a sailing vessel.**

If any question arises whether a vessel is a sailing vessel or not for the purposes of this Part, it shall be decided by the Director-General and his decision thereon shall be final.

**417. Certificate of registry.**

(1) Every sailing vessel shall be registered in accordance with the provisions of this section.

(2) The owner of every sailing vessel shall make an application in the prescribed form to a registrar for the grant to him of a certificate of registry in respect of the vessel.

(3) The owner of every sailing vessel in respect of which an application under sub-section (2) is made, shall cause the tonnage of the vessel to be ascertained in the prescribed manner.

(4) The registrar may make such inquiry as he thinks fit with respect to the particulars contained in such application and shall enter in a register to be kept for the purpose (hereinafter referred to as sailing vessels register) the following particulars in respect of the vessel, namely :—

- (a) the name of the sailing vessel, the place where she was built, and the port to which she belongs ;
- (b) the rig, type and tonnage of the vessel ;
- (c) the name, occupation and residence of the owner of the vessel ;
- (d) the number assigned to the vessel ;
- (e) the mortgages, if any, effected by the owner in respect of the vessel ;
- (f) such other particulars as may be prescribed.

(5) After the particulars in respect of the vessel have been entered in the sailing vessels register under sub-section (4), the registrar shall grant to the applicant a certificate of registry in the prescribed form.

(6) The owner of every sailing vessel shall pay for each certificate of registry a fee according to such scale as may be prescribed by the Central Government, having regard to the tonnage of the vessel, but in no case exceeding one rupee per ton of its gross tonnage.

(7) A sailing vessel requiring to be registered under this Part but not so registered may be detained by a proper officer until the owner or tinal produces a certificate of registry in respect of the vessel.

**418. Particulars relating to sailing vessel to be painted.**

The owner of every sailing vessel so registered shall, before the vessel begins to take any cargo or passengers, paint or cause to be painted permanently in the prescribed manner on some conspicuous part of the sailing vessel, the name by which the vessel has been registered, the number assigned to the vessel by the registrar and the port to which she belongs, and shall take all steps to ensure that the vessel remains painted as required by this section.

**419. Change of name of sailing vessel.**

A change shall not be made in the name of a sailing vessel registered under this Part except in accordance with the rules made in this behalf.

**420. Prevention of over-loading or over-crowding.**

(1) The Central Government may make rules regulating the carriage of cargo or passengers in sailing vessels and the protection of life and property on board such vessels.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the assignment of free board to sailing vessels ;

(b) the marking of such free board on such vessels and the maintenance of such markings ;

(c) the survey of the space allotted to passengers on board such vessels ;

(d) the scale and type of accommodation to be provided for each passenger.

(3) Any sailing vessel attempting to ply or proceed to sea without free board markings or any sailing vessel which has been so loaded as to submerge such markings may be detained by a proper officer until free board markings are made in accordance with the rules made in this behalf or the vessel is so loaded that such markings are not submerged.

(4) Nothing in this section relating to free board, shall apply to any sailing vessel in respect of which a load line has been assigned under Part IX.

#### **421. Certificate of inspection.**

(1) No sailing vessel shall ply or proceed to sea unless there is in force in respect of that vessel a certificate of inspection granted under this Part, the same being applicable to the voyage on which she is about to ply or proceed.

(2) A certificate of inspection in respect of a sailing vessel shall specify—

(a) the name and tonnage of the vessel;

(b) the names of the owner and tindal of the vessel;

(c) the maximum number of the crew and the maximum number of passengers which the vessel is fit to carry;

(d) the limits within which the vessel may be used for the purpose of trading and the terms and conditions subject to which she may be used for such trading;

(e) the particulars of the free board assigned to the vessel; and shall contain a statement to the effect that her hull, rigging and equipment (including auxiliary machinery, if any) are in good condition.

(3) Every certificate of inspection shall be in force from the date of issue for a period of one year or for such shorter period as may be specified therein :

Provided that where a sailing vessel is on a voyage outside India at the time of expiry of the certificate, the certificate shall continue to be valid until her first arrival at a port in India after the expiry of such period.

(4) No customs collector shall grant a port clearance to a sailing vessel registered under this Part until after the production by the owner or tindal thereof of a certificate of inspection granted under this Part in respect of the vessel.

#### **422. Cancellation re-issue, etc., of certificate of inspection.**

(1) Where at any time subsequent to the issue of a certificate of inspection in respect of a sailing vessel, the Director-General has reason to believe that the vessel is not fit to ply or proceed to sea, he may, after giving the owner an opportunity of making a representation, cancel such certificate.

(2) Where at any time subsequent to the issue of a certificate of inspection a sailing vessel has undergone material alteration or has met with accident or, where the certificate of inspection of a sailing vessel has been cancelled under sub-section (1) and an application is made for the re-issue of such certificate or for the grant of a fresh certificate, the registrar may, before re-issuing the certificate or issuing a fresh certificate, as the case may be, cause such vessel to be inspected; and if the authority inspecting the vessel reports that she is not fit to ply or proceed to sea or that her hull, rigging and equipment (including auxiliary machinery, if any) are defective, such certificate shall not be re-issued or issued until the vessel is, in the opinion of such authority, fit to ply or proceed to sea or the defect is rectified to the satisfaction of such authority.

#### **423. Registry of alterations.**

When a sailing vessel is so altered as not to correspond with the particulars relating to her entered in the certificate of registry, the owner of such vessel

shall make a report of such alteration to the registrar of the port where the vessel is registered, and the registrar shall either cause the alteration to be registered, or direct that the vessel be registered anew, in accordance with such rules as may be made in this behalf.

#### **424. Transfer of registry.**

The registry of a sailing vessel may be transferred from one port to another in India on the application of the owner or tindal of the vessel in accordance with such rules as may be made in this behalf.

#### **425. Closure of registry.**

If a sailing vessel is lost, destroyed or rendered permanently unfit for service, the owner of such vessel shall with the least practicable delay report the fact to the registrar of the port where the vessel is registered and also forward to him along with the report, the certificate of registry in respect of the vessel; and thereupon the registrar shall have the registry of the vessel closed.

#### **426. Restrictions on transfer of sailing vessels.**

No person shall transfer or acquire any sailing vessel registered under this Part or any interest therein without the previous approval of the Central Government; and any transaction effected in contravention of this section shall be void and unenforceable.

#### **427. Mortgages of sailing vessels.**

(1) Every mortgage of a sailing vessel or of any interest therein effected after the date on which this part comes into force shall be registered with the registrar.

(2) Every mortgage of a sailing vessel or any interest therein effected before the date on which this part comes into force shall, if subsisting on that date, be registered with the registrar within three months of that date.

(3) The registrar shall enter every such mortgage in the sailing vessels register in the order in which it is registered with him.

(4) If there are more mortgages than one recorded in respect of the same sailing vessel or interest therein, the mortgages shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is registered with the registrar and not according to the date of each mortgage itself :

Provided that nothing contained in this sub-section shall affect the relative priorities as they existed immediately before the date on which this Part comes into force as between mortgages of the same vessel or interest therein effected before such date which are registered in accordance with the provisions of sub-section (2).

#### **428. Fraudulent use of certificate of registry or certificate of inspection, etc., prohibited.**

(1) No person shall use or attempt to use the certificate of registry or the certificate of inspection granted in respect of a sailing vessel for any purpose other than the lawful navigation of the vessel.

(2) No person shall use or attempt to use for the navigation of a sailing vessel a certificate of registry or a certificate of inspection not granted in respect of that vessel.

(3) No person who has in his possession or under his control the certificate of registry or the certificate of inspection of a sailing vessel shall refuse or omit without reasonable cause to deliver such certificate on demand to the owner of the vessel.

**429. Statement relating to crew of sailing vessel to be maintained.**

(1) Every owner or tindal of a sailing vessel shall maintain or cause to be maintained in the prescribed form a statement of the crew of the vessel containing with respect to each member thereof—

- (a) his name ;
- (b) the wages payable to him ;
- (c) the names and addresses of his next-of-kin ;
- (d) the date of commencement of his employment ; and
- (e) such other particulars as may be prescribed.

(2) Every change in the crew of the vessel shall be entered in the statement under sub-section (1).

(3) A copy of such statement and of every change entered therein shall be communicated as soon as possible to the registrar of the port of registry of the vessel concerned.

**430. Inquiry into jettisoning of cargo.**

(1) If any owner or tindal of a sailing vessel in the course of her voyage, has jettisoned or claims to have jettisoned the whole or any part of the cargo of the vessel on account of abnormal weather conditions or for any other reason, he shall immediately after arrival of the vessel at any port in India give notice of such jettisoning to the proper officer at such port; and such notice shall contain full particulars of the cargo jettisoned and the circumstances under which such jettisoning took place.

(2) When any such officer receives notice under sub-section (1) or has reason to believe that the cargo of any sailing vessel in his port has been jettisoned, he shall forthwith report in writing to the Central Government the information he has received and may proceed to make an inquiry into the matter.

**431. Non-Indian sailing vessels not to engage in coasting trade without permission.**

(1) A sailing vessel not owned by a citizen of India or a company which satisfies the requirements specified in clause (b) of section 21, shall not engage in the coasting trade of India without the written permission of the Director-General.

(2) The Director-General may, when granting such permission, impose such terms and conditions as he thinks fit and may require the owner or other person in charge of the vessel to deposit with him such amount as he thinks necessary for the due fulfilment of such terms and conditions.

(3) No customs collector shall grant a port clearance to a sailing vessel not registered under this Part which engages or attempts to engage in the coasting trade of India until after the production by the owner or person in charge thereof of the written permission of the Director-General.

**432. Detention of overloaded non-Indian sailing vessels.**

(1) If any sailing vessel registered in any country outside India arrives in or proceeds from a port or place in India in an overloaded condition, the person in charge of the vessel shall be guilty of an offence under this section.

(2) A sailing vessel shall be deemed to be in an overloaded condition for the purposes of this section—

- (a) where the vessel is loaded beyond the limit specified in any certificate issued in the country in which she is registered ; or
- (b) in case no such certificate has been issued in respect of the vessel, where the actual free board of the vessel is less than the free board which would have been assigned to her had she been registered under this Part.

(3) Any sailing vessel which is in an overloaded condition and is about to proceed from a port or place in India may be detained until she ceases to be in an overloaded condition; but nothing herein contained shall affect the liability of the person in charge of the vessel in respect of such overloading under any other provision of this Act.

#### **433. Power of Courts to rescind contracts between owner and tindal.**

Where a proceeding is instituted in any Court in respect of any dispute between the owner of a sailing vessel and the tindal arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the Court, if having regard to all the circumstances of the case it thinks it just to do so, may rescind any contract between the owner and the tindal upon such terms as the Court may think just and this power shall be in addition to any other jurisdiction which the Court can exercise independently of this section.

#### **434. Application to sailing vessels of other provisions relating to ships.**

The Central Government may, by notification in the Official Gazette, direct that any provisions of this Act other than those contained in this Part which do not expressly apply to sailing vessels shall also apply to sailing vessels subject to such conditions, exceptions and modifications as may be specified in the notification.

#### **435. Power to make rules respecting sailing vessels.**

(1) The Central Government may make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the form in which applications for certificates of registry shall be made and the particulars which such applications should contain ;
- (b) the manner in which the tonnage of sailing vessels shall be ascertained ;
- (c) the manner in which free board is to be assigned to sailing vessels and the free board markings are to be made ;
- (d) the form in which certificates of registry and certificates of inspection may be issued ;
- (e) the issue of duplicate copies of certificates of registry and certificates of inspection where the originals are destroyed, lost, mislaid, mutilated or defaced ;
- (f) the manner in which, and the time within which, applications for the registry of alterations in the certificates of registry of sailing vessels shall be reported, the endorsement of the particulars of alteration on the certificates of registry, the grant of provisional certificates in cases where sailing vessels are directed to be registered anew, the period for which provisional certificates shall be valid and all other matters ancillary to the registry of alterations ;
- (g) the manner in which applications for the transfer of registry of sailing vessels from one port to another in India shall be made and the procedure to be followed by the registrar in connection with such transfer ;
- (h) the authorities by which sailing vessels are to be inspected and certificates of inspection are to be issued under this Part ;
- (i) the criteria by which sailing vessels may be classified for the purpose of determining the limits within which they may be used for purposes of trading ;
- (j) the fixing of the rates of freight which may be charged by sailing vessels for specified goods or for any class of goods in relation to the coasting trade of India ;

- (k) the equipment which sailing vessels or any class of sailing vessels should carry including equipment relating to life saving and fire appliances, lights, shapes and signals required by the collision regulations ;
- (l) the survey of space provided for passengers of sailing vessels and the scale and type of accommodation to be provided for such passengers ;
- (m) the authority to which information regarding certificates of registry, registry of alterations and issue of fresh certificates of registry under this Part is to be sent by registrars ;
- (n) the qualifications to be possessed by tindals and other members of the crew of sailing vessels, the issue of permits to tindals and of identity cards to other members of the crew, the conditions for the issue of such permits and identity cards and the cancellation or suspension thereof ;
- (o) the fees which may be levied for the issue or re-issue of certificates of registry or certificates of inspection and for all other purposes of this Part ;
- (p) the form in which a contract for chartering a sailing vessel shall be executed ;
- (q) the form in which a contract for the carriage of goods by sailing vessels shall be executed ;
- (r) the reservation, in the public interest or in the interest of sailing vessels, of specified commodities for transport by sailing vessels either generally or in specified sectors of the coasting trade or between specified ports and the conditions subject to which such reservation may be made ;
- (s) any other matter which has to be or may be prescribed.

## PART XVI

### PENALTIES AND PROCEDURE

#### *Penalties*

#### **436. Penalties.**

(1) Any person who contravenes any provision of this Act or fails to comply with any provision thereof which it was his duty to comply with, shall be guilty of an offence<sup>a</sup> ; and if in respect of any such offence no penalty is specially provided in sub-section (2), he shall be punishable with fine which may extend to two hundred rupees.

(2) The offences mentioned in the second column of the following table shall be punishable to the extent mentioned in the fourth column of the same with reference to such offences respectively.

[a] Section 436, in so far as it relates to offences mentioned against Serial Nos. 122 to 125 (both inclusive), came into force on first April, 1960—See S. O. 565 dated 28-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
1	If the owner or master of an Indian ship fails to comply with or contravenes sub section (2) of section 28.	28 (2)	Fine which may extend to one thousand rupees.
2	If a person wilfully makes a false statement in the builder's certificate referred to in section 30.	30	Fine which may extend to one thousand rupees.
3	If a person contravenes sub-section (2) of section 35.	35 (2)	Fine which may extend to one thousand rupees.



Serial No.	Offences	Section of this Act to which offence has reference	Penalties
4	If the owner or master of an Indian ship commits an offence under sub-section (4) of section 35.	35 (4)	Fine which may extend to one thousand rupees.
5	If a master, without reasonable cause, fails to comply with sub-section (4) of section 36.	36 (4)	Fine which may extend to five hundred rupees.
6	If a person makes illegal use of a certificate of registry stated to have been mislaid, lost or destroyed or if a person entitled to the certificate of registry obtains it at any time afterwards but fails to deliver the said certificate to the registrar as required by sub-section (5) of section 36.	36 (5)	Fine which may extend to one thousand rupees.
7	If a master fails to deliver to the registrar the certificate of registry as required by sub-section (2) or sub-section (3) of section 38.	38 (2) 38 (3)	Fine which may extend to one thousand rupees.
8	If an owner fails to comply with sub-section (1) of section 39 or if a master fails to comply with sub-section (2) of that section.	39 (1), 39 (2)	Fine which may extend to one thousand rupees.
9	If any person contravenes sub-section (1) of section 42.	42 (1)	Fine which may extend to one thousand rupees.
10	If any person acts or suffers any person under his control to act in contravention of section 55 or omits to do or suffers any person under his control to omit to do anything required under that section.	55	Fine which may extend to one thousand rupees; but nothing herein shall affect the power to detain the ship under sub-section (4) of that section.
11	If an owner fails to make an application for registering anew a ship or for registering an alteration of a ship under section 56.	56	Fine which may extend to one thousand rupees; and in addition, a fine which may extend to fifty rupees for every day during which the offence continues after conviction.
12	If any distinctive national colours except those declared under sub-section (1) of section 63 are hoisted on board any Indian ship.	63 (1)	The master, owner and every other person hoisting the colours shall be liable to fine which may extend to five thousand rupees.
13	If a person contravenes section 64.	64	Imprisonment which may extend to two years, or fine which may extend to five thousand rupees, or both.
14	If an owner or master contravenes section 65.	65	Imprisonment which may extend to two years, or fine which may extend to five thousand rupees, or both.
15	If default is made in complying with section 66.	66	The master shall be liable to fine which may extend to one thousand rupees.
16	If any person in the case of any declaration made in the presence of or produced to a registrar under Part V or in any document or other evidence produced to such registrar— (a) wilfully makes or assists in making or procures to be made, any false statement concerning the title to or ownership of or the interest	General	Imprisonment which may extend to six months, or fine which may extend to one thousand rupees, or both.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
17	<p>existing in any ship or any share in a ship; or</p> <p>(b) utters, produces or makes use of any declaration or document containing any such false statement knowing the same to be false.</p> <p>If any person—</p> <p>(a) having been engaged as one of the officers referred to in section 76 goes to sea as such officer without being duly certificated; or</p> <p>(b) employs a person as an officer without ascertaining that the person is duly certificated.</p>	General	Fine which may extend to five hundred rupees.
18	If a master or owner fails to comply with any of the requirements of section 93.	93	Fine which may extend to two hundred rupees.
19	If a master fails without reasonable cause to comply with any of the requirements of section 94.	94	Fine which may extend to one hundred rupees.
20	If any person acts in contravention of sub-section (2) of section 95 or section 96 or section 97.	95 (2), 96, 97.	Fine which may extend to one hundred rupees for every seaman in respect of whom the offence is committed.
21	If a person engages or carries any seaman to sea in contravention of sub-section (2) of section 98 or section 99.	98(2), 99.	Fine which may extend to one hundred rupees for every seaman in respect of whom the offence is committed.
22	If a master carries any seaman to sea without entering into an agreement with him in accordance with this Act.	100	Fine which may extend to one hundred rupees for every seaman in respect of whom the offence is committed.
23	If a master enters into an agreement with any seaman for a scale of provisions less than the scale fixed under clause (g) of sub-section (2) of section 101.	101 (2) (g)	Fine which may extend to two hundred rupees.
24	If a master fails without reasonable cause, to comply with any of the requirements of section 105, sub-section (4) of section 106 or section 107.	105, 106(4), 107.	Fine which may extend to fifty rupees.
25	<p>If any person—</p> <p>(a) is carried to sea to work in contravention of section 109, section 110 or section 111; or</p> <p>(b) is engaged to work in any capacity in a ship in contravention of section 109, section 110 or section 111 on a false representation by his parent or guardian that the young person is of an age at which such engagement is not in contravention of those sections.</p>	109, 110, 111.	The master shall be liable to a fine which may extend to fifty rupees; The parent or guardian shall be liable to a fine which may extend to fifty rupees.
26	If a master refuses or neglects to produce for inspection any certificate of physical fitness delivered to him under section 111 when required to do so by a shipping Master.	General	Fine which may extend to fifty rupees.
27	If the master of a ship, where there is no agreement with the crew,	General	Fine which may extend to two hundred rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
	fails to keep the register of young persons required to be kept under section 112 or refuses or neglects to produce such register for inspection when required so to do by a shipping master.		
28	If the master of a ship other than an Indian ship engages a seaman in India otherwise than in accordance with section 114.	114	Fine which may extend to one hundred rupees for every seaman so engaged.
29	If any owner, master or agent wilfully disobeys any order under section 115.	115	Imprisonment which may extend to three months, or fine which may extend to one thousand rupees, or both.
30	If a master fails to comply with section 116.	116	Fine which may extend to one hundred rupees.
31	If any person obstructs any officer referred to in section 117 in the exercise of his powers under that section.	General	Fine which may extend to one hundred rupees.
32	If a master or owner acts in contravention of sub-section (1) or sub-section (2) of section 118.	118 (1), 118 (2).	Fine which may extend to one hundred rupees.
33	If a master fails to comply with the provisions of sub-section (1) of section 119, or, without reasonable cause, fails to return the certificate of competency to the officer concerned as required by sub-section (2) of that section.	119 (1), 119 (2).	Fine which may extend to two hundred rupees.
34	If a master fails to comply with section 120.	120	Fine which may extend to one hundred rupees.
35	If any person—  (a) forges or fraudulently alters any certificate of discharge or a certificate as to the work of a seaman or a continuous discharge certificate or a copy of any such certificate; or (b) fraudulently uses any certificate of discharge or a certificate as to the work of a seaman or a continuous discharge certificate or a copy of any such certificate which is forged or altered or does not belong to him.	General	Imprisonment which may extend to six months, or fine which may extend to five hundred rupees, or both.
36	If any person acts in contravention of sub-section (1) of section 121.	121 (1)	Fine which may extend to one thousand rupees.
37	If a master— (a) fails without reasonable cause to comply with sub-section (1) or sub-section (3) of section 122; or (b) delivers a false statement for the purpose of sub-section (2) of section 122.	122 (1), 122 (3).  122 (2)	Fine which may extend to two hundred rupees.
38	If a master fails, without reasonable cause, to comply with section 125.	125	Fine which may extend to fifty rupees.
39	If a master or owner pays the wages of a seaman in a manner	128 (1)	Fine which may extend to one hundred rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
	contrary to sub-section (1) of section 128.		
40	If a master fails to comply with section 131.	131	Fine which may extend to one hundred rupees.
41	If any person fails, without reasonable cause, to comply with any requisition under section 133.	133	Fine which may extend to fifty rupees.
42	If a seaman contravenes sub-section (3) of section 135.	135 (3)	Imprisonment which may extend to one month, or fine which may extend to one hundred rupees, or both, but nothing herein shall take away or limit any other remedy which any person would otherwise have for breach of contract or refund of the money advanced or otherwise.
43	If any person commits a breach of any term of any award which is binding on him under sub-section (5) of section 150.	General	Imprisonment which may extend to one month, or fine which may extend to one thousand rupees, or both.
44	If a seaman or an owner contravenes section 151.	151	Imprisonment which may extend to six months, or fine which may extend to one thousand rupees, or both.
45	If a master fails to comply with the provisions of this Act with respect to taking charge of the property of a deceased seaman or apprentice or to making in the official log book the proper entries relating thereto or to the payment or delivery of such property as required by sub-section (1) of section 154.	154 (1)	Fine which may extend to three times the value of the property not accounted for or if such value is not ascertained, to five hundred rupees, but nothing herein shall affect his liability under sub-section (1) of section 154 to account for the property not accounted for.
46	If the master of an Indian ship fails or refuses without reasonable cause to receive on board his ship or to give a passage or subsistence to, or to provide for, any seaman contrary to sub-section (1) of section 163.	163 (1)	Fine which may extend to one thousand rupees in respect of each such seaman.
47	(a) If a master fails to comply with, or contravenes any provision of, sub-section (3) of section 168 ;	168 (3)	Fine which may extend to two hundred rupees, but nothing herein shall affect the power to detain the ship under sub-section (2) of section 168 ;
	(b) If a master or any other person having charge of any provisions or water on board a ship liable to inspection under section 168 refuses or fails to give the person making the inspection reasonable facility for the purpose.	168 (6)	Fine which may extend to two hundred rupees.
48	If a master fails to furnish provisions to a seaman in accordance with the agreement entered into by him and the Court considers the failure to be due to the neglect or default of the master, or if a master furnishes to a seaman provisions which are bad in quality or unfit for use.	General	Fine which may extend to five hundred rupees, but nothing herein shall affect the claim for compensation under sub-section (1) of section 169.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
49	If a master fails without reasonable cause to comply with section 171.	171	Fine which may extend to one hundred rupees.
50	(a) If any requirement of section 172 is not complied with in the case of any ship; or  (b) if obstruction is caused to the port health officer in the discharge of his duty.	172	The owner shall be liable to fine which may extend to two hundred rupees unless he can prove that the non-compliance was not caused by his inattention, neglect or wilful default; the owner or master shall be liable to fine which may extend to two hundred rupees unless he can prove that the obstruction was caused without his knowledge or connivance.
51	If any foreign-going ship referred to in sub-section (1) of section 173 does not carry on board a duly qualified medical officer.	173 (1)	The owner shall be liable for each voyage of the ship made without having on board a duly qualified medical officer, a fine which may extend to two hundred rupees.
52	If a master fails, without reasonable cause, to comply with section 184.	184	Fine which may extend to one hundred rupees.
53	If any person fails to comply with sub-section (1) of section 187.	187 (1)	Fine which may extend to one hundred rupees.
54	If any person contravenes section 188.	188	Fine which may extend to fifty rupees.
55	If any person goes on board a ship contrary to section 189.	189	Fine which may extend to two hundred rupees.
56	If a master, seaman or apprentice contravenes section 190.	190	Imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both.
57	If a seaman or apprentice — (a) deserts his ship;          (b) contravenes clause (b) of sub-section (1) of section 191.	191 (1) (a)          191 (1) (b)	He shall be liable to forfeit all or any part of the property he leaves on board and of the wages he has then earned and also if the desertion takes place at any place not in India, to forfeit all or any part of the wages which he may earn in any other ship in which he may be employed until his next return to India, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him, and also to imprisonment which may extend to three months; he shall, if the contravention does not amount to desertion, be liable to forfeit out of his wages a sum not exceeding two days' pay and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay or any expenses properly incurred in hiring a substitute and also to imprisonment which may extend to two months.
58	If any person contravenes sub-section (3) of section 193.	193 (3)	Fine which may extend to two hundred rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
	If a seaman or apprentice is guilty of the offence specified in— (i) clause (a) of section 194; (ii) clause (b) of section 194; (iii) clause (c) of section 194;  (iv) clauses (d) and (e) of section 194;  (v) clause (f) of section 194.	194	Forfeiture out of his wages of a sum not exceeding one month's pay; forfeiture out of his wages of a sum not exceeding two days' pay; imprisonment which may extend to one month and also for every twenty-four hours of continuance of such disobedience or neglect; forfeiture out of his wages of a sum not exceeding six days' pay or any expenses which may have been properly incurred in hiring a substitute; imprisonment which may extend to three months, or fine which may extend to five hundred rupees, or both; forfeiture out of his wages of a sum equal to the loss sustained and also imprisonment which may extend to three months.
60	If any master fails to comply with section 197.	197	Imprisonment which may extend to one month, or fine which may extend to one hundred rupees, or both.
61	If a seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or alleged last ship or wilfully and fraudulently makes a false statement of his own name.	General	Fine which may extend to fifty rupees.
62	If a master or owner neglects or refuses to pay over the fine under sub-section (1) of section 202.	202	Fine which may extend to six times the amount of the fine retained by him.
63	If any person contravenes section 203.	203	Fine which may extend to one hundred rupees.
64	If any person contravenes section 204.	204	Fine which may extend to one hundred rupees.
65	If any person goes to sea in a ship contrary to sub-section (1) of section 205.	205 (1)	Imprisonment which may extend to one month, or fine which may extend to two hundred rupees, or both.
66	(a) If any person wilfully disobeys the prohibition contained in clause (a) of section 206; or  (b) If any master or owner refuses or neglects to deposit any wages, money or other property or sum in the manner required by clause (b) of section 206.	206 (a)  206 (b)	Imprisonment which may extend to three months, or fine which may extend to one thousand rupees, or both. Fine which may extend to five hundred rupees.
67	If a master fails to deliver or transmit the documents referred to in sub-section (1) of section 208 or section 209 as provided therein.	208 (1), 209.	Fine which may extend to five hundred rupees.
68	If a master contravenes sub-section (1) of section 210.	210 (1)	Imprisonment which may extend to three months, or fine which may extend to one thousand rupees, or both.
69	If any person harbours or secretes any deserter knowing or having	General	Fine which may extend to two hundred rupees.

Serial No.	Offences.	Section of this Act to which offence has reference	Penalties
	reason to believe that he has deserted.		
70	If a master fails to comply with sub-section (2) of section 214.	214 (2)	Fine which may extend to one hundred rupees.
71	(a) If sub-section (1) of section 215 is not complied with;	215 (1)	The master shall be liable to fine which may extend to fifty rupees, if no other penalty is provided in this Act;
	(b) If any person contravenes sub-section (2) of section 215.	215 (2)	fine which may extend to three hundred rupees.
72	If any person wilfully destroys or mutilates or renders illegible any entry in any official log book or wilfully makes or procures to be made or assists in making a false or fraudulent entry in or omission from an official log book.	General	Imprisonment which may extend to one year.
73	If a master fails, without reasonable cause, to comply with section 216.	216	Fine which may extend to two hundred rupees.
74	If a master or owner fails, without reasonable cause, to comply with section 217.	217	Fine which may extend to one hundred rupees.
75	If an owner, agent or master without reasonable cause neglects to give the notice required by sub-section (1) of section 229.	229 (1)	Fine which may extend to five hundred rupees.
76	If an owner or master, without reasonable cause, fails to deliver a certificate under section 230.	230	Fine which may extend to one hundred rupees.
77	If a certificate or survey is not affixed or kept affixed as required by section 231.	231	The owner or master shall be liable to fine which may extend to two hundred rupees.
78	If a ship carries or attempts to carry passengers in contravention of sub-section (1) of section 220 or has on board a number of passengers in contravention of sub-section (1) of section 232.	220 (1), 232 (1).	The owner, agent or master shall be liable to fine which may extend to one thousand rupees.
79	(a) If a person is guilty of any offence specified in sub-section (1) of section 233;	233 (1)	The person concerned shall be liable to fine which may extend to fifty rupees; but this liability shall not prejudice the recovery of the fare, if any, payable by him; fine which may extend to three hundred rupees.
	(b) If a person contravenes sub-section (2) of section 233.	233 (2)	
80	If an unberthed passenger or pilgrim ship departs or proceeds on a voyage from or discharges unberthed passengers or pilgrims at any port or place within India in contravention of sub-section (1) of section 237, or if a person is received as an unberthed passenger or pilgrim on board any such ship in contravention of sub-section (2) of that section.	237 (1), 237 (2).	The master, owner or agent shall be liable to fine which may extend to one thousand rupees.
81	If the master, owner or agent of an unberthed passenger or pilgrim ship fails to give the notice required by sub-section (1) of section 238.	238 (1)	Fine which may extend to two hundred rupees.
82	If a person impedes or refuses to allow any entry or inspection authorised by section 239.	239	Fine which may extend to five hundred rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
83	If a master or owner fails to comply with section 246.	246	Fine which may extend to two hundred rupees.
84	If the master, owner or agent of an unberthed passenger or pilgrim ship, after having obtained any of the certificates mentioned in Part VIII, fraudulently does or suffers to be done anything whereby the certificate becomes inapplicable to the altered state of the ship, her unberthed passengers or pilgrims or other matters to which the certificate relates.	General	Imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.
85	If the master of an unberthed passenger or pilgrim ship or any contractor employed by him for the purpose contravenes section 247.	247	Fine which may extend to thirty rupees for every unberthed passenger or pilgrim, who has sustained detriment by the omission to supply the prescribed provisions.
86	If an unberthed passenger or pilgrim ship carries unberthed passengers or pilgrims in contravention of sub-section (1) of section 248.	248 (1)	The master, owner or agent shall be liable to fine which may extend to two thousand rupees.
87	If a master, owner or agent contravenes section 249.	249	Fine which may extend to one thousand rupees.
88	If an owner, agent or master contravenes section 252.	252	Fine which may extend to one thousand rupees.
89	If the master, owner or agent fails to comply with sub-section (1) of section 255.	255 (1)	Fine which may extend to two hundred rupees.
90	If medical officers or medical attendants are not carried on an unberthed passenger ship as required by sub-section (1) or sub-section (2) of section 259, as the case may be; or if the ship is not provided with a hospital, medical stores and equipment as required by sub-section (3) of that section.	259	The master, owner or agent shall be liable for each voyage made in contravention of section 259 to fine which may extend to five hundred rupees.
91	If an owner, agent or master contravenes section 260.	260	Fine which may extend to one thousand rupees.
92	(a) If medical officers and attendants are not carried on a pilgrim ship in accordance with sub-section (1) of section 269; or	269 (1)	The master, owner or agent shall be liable for each voyage made in contravention of sub-section (1) of section 269 to fine which may extend to three hundred rupees;
	(b) If a medical officer or attendant on a pilgrim ship contravenes sub-section (3) of section 269.	269 (3)	Fine which may extend to two hundred rupees.
93	If a master, owner or agent contravenes sub-section (4) of section 278.	278 (4)	Fine which may extend to two thousand rupees.
94	If section 291 is not complied with in the case of a ship.	291	The master or owner shall be liable to fine which may extend to one thousand rupees.
95	If section 292 is not complied with in the case of a ship.	292	The master or owner shall be liable to fine which may extend to two hundred rupees.
96	If any ship proceeds or attempts to proceed to sea in contravention of section 297.	297	The master or owner shall be liable to fine which may extend to two hundred rupees.



Serial No.	Offences	Section of this Act to which offence has reference	Penalties
97	If any ship proceeds or attempts to proceed to sea without carrying on board the information required by sub-section (1) of section 298.	298 (1)	The master or owner shall be liable to fine which may extend to one thousand rupees.
98	If any ship proceeds or attempts to proceed to sea in contravention of section 307.	307	The master or owner shall be liable to fine which may extend to— (a) in the case of a passenger ship, to one hundred rupees for every passenger carried on board the ship but without prejudice to any other remedy or penalty under this Act; and (b) in the case of a ship other than a passenger ship, to one thousand rupees.
99	If any ship proceeds or attempts to proceed to sea in contravention of section 312.	312	The master or owner shall be liable to fine which may extend to one thousand rupees.
100	If any ship is loaded in contravention of section 313.	313	The master or owner shall be liable to fine which may extend to ten thousand rupees and to such additional fine not exceeding one thousand rupees for every inch or fraction of an inch by which the appropriate load lines on each side of the ship are submerged or would have been submerged if the ship had been in salt waters and had no list, as the Court thinks fit to impose, having regard to the extent to which the earning capacity of the ship is or would have been increased by reason of the submersion : Provided that it shall be a good defence for the master or owner to prove that a contravention was due solely to deviation or delay caused solely by stress of weather or other circumstance which neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.
101	(a) If the owner or master of an Indian ship contravenes sub-section (1) of section 314; or (b) if any person contravenes sub-section (2) of section 314.	314 (1) 314 (2)	Fine which may extend to one thousand rupees.
102	If a master or owner fails to deliver the certificate as required under sub-section (5) of section 317.	317 (5)	Fine which may extend to one hundred rupees.
103	If a master proceeds or attempts to proceed to sea in contravention of sub-section (1) of section 318.	318 (1)	Fine which may extend to one thousand rupees.
104	(a) If the owner of an Indian ship fails to comply with clause (a) of sub-section (1) of section 319, or (b) if a master fails to comply with clause (b) of sub-section (1), or clause (a) or clause (b) of sub-section (2) of section 319.	319 (1) (a) 319 (1) (b), 319 (2).	Fine which may extend to two hundred rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties.
105	If a master fails to comply with sub-section (1) of section 320.	320 (1)	Fine which may extend to one hundred rupees.
106	(a) If a master, owner or agent is guilty of an offence under sub-section (1) of section 332; or (b) if the owner or master of a ship is guilty of an offence under sub-section (2) of section 332; or (c) if a master fails to deliver any notice required by sub-section (3) of section 332 or if in any such notice he makes any statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular.	332(1) } 332(2) } 332(3)	Fine which may extend to three thousand rupees;  Fine which may extend to one thousand rupees.
107	If a ship is loaded in contravention of sub-section (1) of section 333.	333(1)	The master or owner shall be liable to fine which may extend to ten thousand rupees and to an additional fine not exceeding one thousand rupees for every inch or fraction of an inch by which the appropriate sub-division load line on each side was submerged or would have been submerged if the ship had no list, as the Court thinks fit to impose, having regard to the extent to which the earning capacity of the ship was, or would have been, increased by reason of the submersion.
108	If a person is guilty of an offence under sub-section (1) or if a master is guilty of an offence under sub-section (2) of section 334.	334(1), 334(2).	Imprisonment which may extend to six months, or fine which may extend to one thousand rupees, or both.
109	If a master or person in charge of a ship fails, without reasonable cause, to comply with section 348.	348	Imprisonment which may extend to three months or fine which may extend to three thousand rupees, or both.
110	If a master fails to comply with section 349.	349	Fine which may extend to two hundred rupees.
111	If the owner or master fails, without reasonable cause, to comply with section 350.	350	Fine which may extend to five hundred rupees.
112	If the owner or agent fails, without reasonable cause, to comply with section 351.	351	Fine which may extend to five hundred rupees.
113	If any person contravenes section 353.	353	Fine which may extend to five hundred rupees.
114	If a master fails to comply with section 354.	354	Fine which may extend to five hundred rupees.
115	(a) If a master fails to comply with sub-section (1) or sub-section (2) of section 355; or  (b) if a master fails to comply with sub-section (5) of section 355.	355(1), 355(2),  355(5)	Imprisonment which may extend to six months, or fine which may extend to one thousand rupees, or both;  Fine which may extend to one thousand rupees.
116	If any person bound to give notice under sub-section (2) of section 358 fails to give such notice.	358(2)	Fine which may extend to five hundred rupees and in default of payment, simple imprisonment which may extend to three months.
117	If a master or ship's officer fails to comply with section 378.	378	Fine which may extend to five hundred rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
118	If any person wilfully disobeys any direction of the receiver of wreck under section 392.	392	Fine which may extend to five hundred rupees.
119	If the owner or occupier of any land impedes or in any way hinders any person in the exercise of the rights given by section 393.	393	Fine which may extend to five hundred rupees.
120	(a) If any person omits to give notice of the finding of any wreck to the receiver of wreck as required by clause (a) of section 395; or (b) if any person omits to deliver any wreck as required by clause (b) of section 395.	395(a)  395(b)	Fine which may extend to one thousand rupees;  Fine which may extend to one thousand rupees and in addition forfeiture of all claims to salvage and payment to the owner of such wreck, if the same is claimed, or if the same is unclaimed, to the Government, a penalty, not exceeding twice the value of such wreck.
121	If any person contravenes any of the provisions of section 400.	400	Fine which may extend to five hundred rupees.
122	(a) If a ship is taken to sea in contravention of sub-section (1) of section 406 or if a ship engages in the coasting trade in contravention of sub-section (1) of section 407; or (b) if, without reasonable excuse, any limitation or condition contained in a licence granted under section 406 or section 407 is contravened.	406(1), 407(1)  406, 407.	The master or owner of the ship or in the case of a ship other than an Indian ship, the master, agent in India of the owner or the charterer of the ship in respect of which the contravention has taken place shall be liable to imprisonment which may extend to six months, or fine which may extend to one thousand rupees, or both.
123	If a person to whom a licence under section 406 or section 407 has been granted fails to comply with section 409.	409	Fine which may extend to one hundred rupees.
124	(a) If any directions given under section 411 are not complied with; or (b) if the provisions of sub-section (3) of section 412 are contravened.	411  412(3)	The owner, master or agent shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or both.
125	If the owner, master or agent on whom a notice has been served under section 413 fails to furnish the information required within the time specified or in furnishing the information makes any statement which he knows to be false on any material particular.	413	Imprisonment which may extend to six months, or fine which may extend to five hundred rupees, or both.
126	If a sailing vessel required to be registered under section 417 is not registered in accordance with the provisions of that section.	417	The owner or tindal shall be liable to fine which may extend to five hundred rupees.
127	If the owner fails to comply with section 418.	418	Fine which may extend to two hundred rupees.
128	If the provisions of section 419 are contravened.	419	The owner or tindal shall be liable to fine which may extend to two hundred rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
129	If any sailing vessel attempts to ply or proceed to sea without free board markings or is so loaded as to submerge such markings, or plies or proceeds to sea without a certificate of inspection as required by sub-section (1) of section 421, or if any of the terms and conditions specified in such certificate are contravened.	420 (3), 421.	The owner or tindal shall be liable to imprisonment which may extend to six months, or to fine which may extend to five hundred rupees, or both.
130	If the owner fails to comply with section 423.	423	Fine which may extend to two hundred rupees and in addition a fine which may extend to twenty rupees for every day during which the offence continues after conviction.
131	If the owner fails to comply with section 425.	425	Fine which may extend to two hundred rupees.
132	If any person contravenes section 426.	426	Fine which may extend to five hundred rupees.
133	If any person contravenes any of the provisions of section 428.	428	Imprisonment which may extend to three months, or fine which may extend to two hundred rupees, or both.
134	If the owner or tindal fails to comply with any of the provisions of section 429.	429	Fine which may extend to two hundred rupees.
135	If the owner or tindal fails to comply with sub-section (1) of section 430.	430 (1)	Imprisonment which may extend to three months, or fine which may extend to two hundred rupees, or both.
136	(a) If a sailing vessel is engaged in the coasting trade in contravention of sub-section (1) of section 431; or (b) if any of the terms and conditions imposed under sub-section (2) of section 431 are contravened.	431 (1) 431 (2)	The owner, tindal or agent shall be liable to imprisonment which may extend to six months, or fine which may extend to five hundred rupees, or both.
137	If any person is guilty of an offence under sub-section (1) of section 432.	432 (1)	Imprisonment which may extend to six months, or fine which may extend to five hundred rupees, or both.
138	(a) If the master is guilty of an offence under sub-section (2) of section 444; or (b) if the owner, master or agent is guilty of an offence under sub-section (3) of section 444.	444 (2) 444 (3)	Fine which may extend to one thousand rupees.
139	If any person exercises the profession of a ship surveyor in contravention of section 450.	450	Fine which may extend to one thousand rupees.
140	If any person does any act in contravention of sub-section (2) of section 454 in respect of which no other penalty is provided.	454 (2)	Fine which may extend to two hundred rupees.
141	If any person is guilty of an offence under sub-section (2) of section 456.	456 (2)	Fine which may extend to five hundred rupees.

*Procedure***437.<sup>a</sup> Place of trial.**

Any person committing any offence under this Act or any rule or regulation thereunder may be tried for the offence in any place in which he may be found or which the Central Government may, by notification in the Official Gazette, direct in this behalf, or in any other place in which he might be tried under any other law for the time being in force.

[a] Section 437 came into force on 1st April, 1960—see S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**438.<sup>a</sup> Cognizance of offences.**

The penalties to which masters and owners of unberthed passenger and pilgrim ships are made liable by section 436 shall be enforced only on information laid at the instance of the certifying officer, or, at any port or place where there is no such officer at the instance of such other officer as the Central Government may specify in this behalf.

[a] Section 438 came into force on 1st April, 1960—see S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**439.<sup>a</sup> Jurisdiction of Magistrates.**

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or any rule or regulation thereunder.

[a] Section 439 came into force on 1st April, 1960—see S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**440.<sup>a</sup> Special provision regarding punishment.**

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for a Presidency Magistrate or a Magistrate of the first class to pass any sentence authorised by or under this Act on any person convicted of an offence under this Act or any rule or regulation thereunder.

[a] Section 440 came into force on 1st April, 1960—see S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**441.<sup>a</sup> Offences by companies.**

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be

**Section 437 — Note 1**

[1] Trial of British seaman for offence committed on high seas on British ship — Trial must be conducted under the Code of Criminal Procedure, though the offence must be an offence under English law. ('94) 21 Cal 782 (784) (DB).

[2] An Indian who commits murder on board a steamer on high seas may be tried by a Court having jurisdiction over place where

he may be found and substantive law applicable is English law. ('12) 13 Cri L Jour 246 (247) : 39 Cal 487. (Case under old Act.)

[3] Trial of British seaman for offences committed on board any British ship on high seas — Procedure — Trial of accused according to ordinary practice of High Court is proper and evidence taken on commission is admissible. ('89) 16 Cal 238 (244) (FB).

deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) “company” includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

[a] Section 441 came into force on 1st April, 1960—see S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

#### **442.\* Depositions to be received in evidence when witness cannot be produced.**

(1) Whenever, in the course of any legal proceeding under this Act instituted at any place in India before any court or magistrate or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter, and the defendant or the person accused (as the case may be), after being allowed a reasonable opportunity for so doing, does not produce the witness before the court, magistrate or person so authorised, any deposition previously made by the witness in relation to the same subject-matter before any court, justice or magistrate in any other place in India or, if elsewhere, before a Marine Board or before any Indian consular officer, shall be admissible in evidence—

(a) if the deposition is authenticated by the signature of the presiding officer of the court or of the justice, magistrate or Marine Board or consular officer, before whom it is made;

(b) if the defendant or the person accused had an opportunity by himself or his agent of cross-examining the witness;

(c) if the proceeding is criminal, on proof that the deposition was made in the presence of the person accused.

(2) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed such deposition; and a certificate by such person that the defendant or person accused had an opportunity of cross-examining the witness, and that the deposition, if made in a criminal proceeding, was made in the presence of the person accused, shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

[a] Section 442 came into force on 1st April, 1960—see S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

#### **443. Power to detain foreign ship that has occasioned damage.**

(1) Whenever any damage has in any part of the world been caused to property belonging to the Government or to any citizen of India or a company by a ship other than an Indian ship and at any time thereafter that ship is found within Indian jurisdiction, the High Court may, upon the application of any person who alleges that the damage was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named in the order requiring him to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the damage or has given security to the satisfaction of the High Court to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the damage, and any officer to whom the order is directed shall detain the ship accordingly.

(2) Whenever it appears that before an application can be made under this section, the ship in respect of which the application is to be made will have departed from India of the territorial waters of India, any proper officer may detain the ship for such time as to allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceedings in relation to any such damage aforesaid, the person giving security shall be made a defendant and shall for the purpose of such proceeding be deemed to be the owner of the ship that has occasioned the damage.

#### **444. Power to enforce detention of ship.**

(1) Where under this Act a ship is authorised or ordered to be detained, any commissioned officer of the Indian Navy or any port officer, pilot, harbour master, conservator of port or customs collector may detain the ship.

(2) If any ship after detention, or after service on the master of any notice of, or order for, such detention proceeds to sea before she is released by competent authority, the master of the ship shall be guilty of an offence under this sub-section.

(3) When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty any person authorised under this Act to detain or survey the ship, the owner, master or agent of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea and shall also be guilty of an offence under this sub-section.

(4) When any owner, or master or agent is convicted of an offence under sub-section (3), the convicting magistrate may inquire into and determine the amount payable on account of expenses by such owner, master or agent under that sub-section and may direct that the same shall be recovered from him in the manner provided for the recovery of fines.

#### **445. Levy of wages, etc., by distress of movable property or ship.**

(1) When an order under this Act for the payment of any wages or other sums of money is made by a court, magistrate or other officer or authority, and the money is not paid at the time or in the manner directed, the sum mentioned in the order with such further sum as may be thereby awarded for costs, may be levied by distress and sale of the movable property of the person directed to pay the same under a warrant to be issued for that purpose by a magistrate.

(2) Where any court, magistrate or other officer or authority has power under this Act, to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then if the person so directed, to pay the same is the master, owner or agent of a ship and the same is not paid at the time or in the manner directed by the order the court, magistrate, officer or authority may, in addition to any other power it or he may have for the purpose of compelling payment by warrant, direct the amount remaining unpaid to be levied by distress and sale of the ship and her equipment.

#### **446. Notice to be given to consular representative of proceedings taken in respect of foreign ship.**

If any ship other than an Indian ship is detained under this Act, or if any proceedings are taken under this Act against the master, owner or agent of any such ship, notice shall forthwith be served on the consular officer of the country in which the ship is registered, at or nearest to the port where the ship is for the time being, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

#### **447.\* Application of fines.**

A magistrate imposing a fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may have sustained by the act or default in respect of which the fine is imposed or in or towards payment of the expenses of the prosecution.

[a] Section 447 came into force on 1st April, 1960 — See S. O. 565 dated 28-2-1960 Published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 888.

**448.\* Service of documents.**

Where for the purposes of this Act, any document is to be served on any person, that document may be served—

- (a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or by post ; and
- (b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship, with the person being or appearing to be in command or charge of the ship ; and
- (c) if the document is to be served on the master of a ship where there is no master and the ship is in India, on the owner of the ship, or, if such owner is not in India, on some agent of the owner residing in India, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

[a] Section 448 came into force on 1st April 1960 — See S. O. 565, dated 28-2-1960, published in Gaz. of Ind., 1960, Pt. II-S. 3 (ii), page 886.

## PART XVII

## MISCELLANEOUS

**449. Power to appoint examiners and to make rule as to qualifications of ship surveyors.**

The Central Government may appoint persons for the purpose of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in India and may make rules—

- (a) for the conduct of such examinations and the qualifications to be required ;
- (b) for the grant of certificates to qualified persons ;
- (c) for the fees to be paid for such examinations and certificates ;
- (d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates ; and
- (e) for the cancellation and suspension of such certificates.

**450. No person to practise as ship surveyor unless qualified.**

No person shall in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section 449 exercise such profession in such port unless he holds a certificate granted under that section :

Provided that nothing herein contained shall prevent any person employed exclusively by Lloyd's Register of Shipping or Bureau Veritas or any other classification society specified by the Central Government in the Official Gazette in this behalf from discharging any of the duties of such employment or apply to any person specially exempted by the Central Government from the operation of this section.

**451. Power of ship surveyor to inspect ship.**

Any person holding a certificate granted under section 449 and exercising the profession of a ship surveyor at any port in India may in the execution of his duties go on board a ship and inspect the same and every part thereof and the machinery, equipment and cargo and may require the unloading or removal of any cargo, ballast or tackle.

**452. Inquiry into cause of death on board Indian ship.**

(1) If any person dies on board a foreign-going Indian ship, the proper officer at the port where the crew of the ship is discharged, or the proper officer at any earlier port of call in India, shall, on the arrival of the ship at



that port, inquire into the cause of death, and shall make in the official log book an endorsement to the effect, either that the statement of the cause of death in the book is in his opinion true, or the contrary, according to the result of the inquiry.

(2) If, in the course of any such inquiry, it appears to the proper officer that a death has been caused on board the ship by violence or other improper means, he shall either report the matter to the Director-General or, if the emergency of the case so requires, shall take immediate steps for bringing the offender to trial.

#### **453. Certain persons deemed to be public servants.**

The following persons shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, namely :—

- (a) every surveyor ;
- (b) every judge, assessor or other person acting under Part XII ;
- (c) every person appointed under this Act to report information as to shipping casualties ;
- (d) every person authorised under this Act to make any investigation or inquiry under Part X and all persons whom he calls to his aid ;
- (e) every person directed to make an investigation into an explosion or fire on a ship under section 388 ;
- (f) every other officer or person appointed under this Act to perform any functions thereunder.

#### **454. Powers of persons authorised to investigate, etc.**

(1) Every judge, assessor, officer or other person who is empowered by this Act to make an investigation or inquiry or to board, survey, inspect or detain a ship—

- (a) may go on board any ship and inspect the same or any part thereof, or any of the machinery, equipment or articles on board thereof, or any certificates of the master or other officer to which the provisions of this Act or any of the rules or regulations thereunder apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage, and if in consequence of any accident to the ship or for any other reason it is considered necessary so to do, may require the ship to be taken into dock for the purpose of inspection or survey ;
- (b) may enter and inspect any premises, the entry and inspection of which appears to be requisite for the purpose aforesaid ;
- (c) may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine them for the purpose aforesaid, and may require answers or returns to any enquiries he thinks fit to make ;
- (d) may require and enforce the production of all relevant books, papers, or documents ;
- (e) may administer oaths or may in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination ; and
- (f) may muster the crew of any such ship.

(2) No person shall hinder or obstruct any officer or person referred to in sub-section (1) from going on board any ship or otherwise impede him in the execution of his duties or the exercise of his powers under this Act.

*Explanation.*—In this section, “ship” includes a sailing vessel.

**455. Exemption of Public ships, foreign and Indian.**

(1) This Act shall not, except where specially provided, apply to ships belonging to any foreign prince or State and employed otherwise than for profit in the public service of the foreign prince or State.

(2) The Central Government may, by notification in the Official Gazette, direct that the provisions of this Act or any of them shall not apply to ships belonging to the Government or to any class of such ships.

**456.<sup>a</sup> Power to exempt.**

(1) Notwithstanding anything contained in this Act, the Central Government may, by order in writing and upon such conditions, if any, as it may think fit to impose, exempt any ship or sailing vessel or any master, tindal or seaman from any specified requirement contained in or prescribed in pursuance of this Act or dispense with the observance of any such requirement in the case of any ship or sailing vessel or any master, tindal or seaman, if it is satisfied that that requirement has been substantially complied with or that compliance with the requirement is or ought to be dispensed with in the circumstances of the case.

(2) Where an exemption is granted under sub-section (1) subject to any conditions, a breach of any of those conditions shall, without prejudice to any other remedy, be deemed to be an offence under this sub-section.

[a] Section 456 came into force on 1st April, 1960—See S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**457.<sup>a</sup> General power to make rules.**

Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules generally to carry out the purposes of this Act.

[a] Section 457 came into force on 1st April, 1960—See S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**458.<sup>a</sup> Provisions with respect to rules and regulations.**

(1) All rules and regulations made under this Act shall be published in the Official Gazette.

(2) In making a rule or regulation under this Act, the Central Government may direct that a breach thereof shall be punishable—

(a) in the case of a rule made under section 331, with imprisonment which may extend to two years, or with fine which may extend to ten thousand rupees or with both ;

(b) in the case of any other rule or regulation made under any other provision of this Act, with fine which may extend to one thousand rupees ;

and in either case if the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

(3) All rules and regulations made under this Act shall be laid for not less than thirty days before each house of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

[a] Section 458 came into force on 1st April, 1960—See S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**Section 455 — Note 1**

[1] Section 4, Merchant Shipping Act, is applicable only to public ships in the sense of belonging to a foreign State. A ship owned by an individual foreigner cannot be said to

belong to the State of which the foreigner is a national or a citizen and he cannot, therefore, claim the exemption under that section. 1952 Cal 859(863) [AIR V 39]. (Case under old Act.)

**459.\* Power to constitute committees to advise on rules, regulations and scales of fees.**

(1) The Central Government may, if it thinks fit, constitute one or more committees consisting of such number of persons as it may appoint thereto representing the interests principally affected or having special knowledge of the subject-matter, for the purpose of advising it when considering the making or alteration of any rules, regulations or scales of fees under this Act or for any other purpose connected with this Act.

(2) There shall be paid to the members of any such committee such travelling and other allowances as the Central Government may fix.

(3) Committees may be constituted under this section to advise the Central Government either generally as regards any rules, regulations or scales of fees or as regards any class or classes of rules, regulations or scales of fees in particular or for any other purpose connected with this Act.

[a] Section 459 came into force on 1st April, 1960 — See S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

**460.\* Protection of persons acting under Act.**

No suit or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

[a] Section 460 came into force on 1st April, 1960 — See S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-section 3 (ii), page 886.

## PART XVIII

### REPEALS AND SAVINGS

**461. Repeals and savings.**

(1) The enactments specified in Part I of the Schedule<sup>a</sup> are hereby repealed to the extent specified in the fourth column thereof.

(2) The enactments specified in Part II of the Schedule, in so far as they extend to and operate as part of the law of India, are hereby repealed.

(3) notwithstanding the repeal of any enactment by sub-s. (1) or sub-s. (2).—

(a) any notification, rule, regulation, bye-law, order or exemption issued, made or granted under any enactment hereby repealed shall, until revoked, have effect as if it had been issued, made or granted under the corresponding provision of this Act;

(b) any officer appointed and any body elected or constituted under any enactment hereby repealed shall continue and shall be deemed to have been appointed, elected or constituted, as the case may be, under this Act;

(c) any document referring to any enactment hereby repealed shall be construed as referring to this Act or to the corresponding provision of this Act;

(d) any fine levied under any enactment hereby repealed may be recovered as if it had been levied under this Act;

(e) any offence committed under any enactment hereby repealed may be prosecuted and punished as if it had been committed under this Act;

(f) sailing vessels registered under any enactment hereby repealed shall be deemed to have been registered under this Act;

(g) mortgages of ships recorded in any register book maintained at any port in India under any enactment hereby repealed shall be deemed to have been recorded in the register book under the corresponding provision of this Act;

(h) any licence, certificate of competency or service, certificate of survey, A or B certificate, safety certificate, qualified safety certificate, radio telegraphy certificate, radio telephony certificate, safety equipment certi-

cate, exemption certificate, international or Indian load line certificate or any other certificate or document issued, made or granted under any enactment hereby repealed and in force at the commencement of this Act shall be deemed to have been issued, made or granted under this Act and shall, unless cancelled under this Act continue in force until the date shown in the certificate or document, as the case may be.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of S. 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

[a] So much of section 461 and of Part I of the Schedule as relate to the Control of Shipping Act, 1947 (XXVI of 1947) came into force on 1st April, 1960— See S. O. 565 dated 26-2-1960 published in Gaz. of Ind., 1960, Pt. II-sec. 3 (ii), page 886.

## THE SCHEDULE ENACTMENTS REPEALED

### PART I

[See section 461 (1) ]

Year	No.	Short title	Extent of repeal
1838	19	The Coasting Vessels Act, 1838.	In so far as it applies to sea going ships fitted with mechanical means of propulsion and to sailing vessels.
1841	10	The Indian Registration of Ships Act, 1841.	The whole.
1850	11	The Indian Registration of Ships Act (1841) Amendment Act, 1850.	The whole.
1923	21	The Indian Merchant Shipping Act, 1923.	The whole.
1946	21	The Merchant Seamen (Litigation) Act, 1946.	The whole.
1947	26	The Control of Shipping Act, 1947.	The whole.
1949	18	The Merchant Shipping Laws (Extension to Acceding States and Amendment) Act, 1949.	The whole.

### PART II

[See section 461 (2) ]

Year	Short title
1823	Lascars Act (4 Geo. 4, c. 80).
1894	Merchant Shipping Act (57 & 58 Vict., c. 60).
1897	Merchant Shipping Act (60 & 61 Vict., c. 59).
1898	Merchant Shipping (Liability of Ship-owners) Act (61 & 62 Vict., c. 14).
1898	Merchant Shipping (Mercantile Marine Fund) Act (61 & 62 Vict., c. 44).
1900	Merchant Shipping (Liability of Ship-owners and others) Act, 63 & 64 Vict. c. 32.
1906	Merchant Shipping Act (6 Edw. 7, c. 48).
1907	Merchant Shipping Act (7 Edw. 7, c. 52).
1911	Merchant Shipping (Seamen's Allotment) Act (1 & 2 Geo. 5, c. 8).
1911	Merchant Shipping Act (1 & 2 Geo. 5, c. 42).
1911	Maritime Conventions Act (1 & 2 Geo. 5, c. 57).
1914	Merchant Shipping (Certificates) Act (4 & 5 Geo. 5, c. 42).
1916	Merchant Shipping (Salvage) Act (6 & 7 Geo. 5, c. 41).
1919	Merchant Shipping (Wireless Telegraphy) Act (9 & 10 Geo. 5, c. 38).
1921	Merchant Shipping Act (11 & 12 Geo. 5, c. 28).
1923	Merchant Shipping Acts (Amendment) Act (13 & 14 Geo. 5, c. 40).
1925	Merchant Shipping (Equivalent Provisions) Act (15 & 16 Geo. 5, c. 37).
1932	Merchant Shipping (Safety and Load Line Conventions) Act (22 & 23 Geo. 5, c. 9).
1936	Merchant Shipping (Carriage of Munitions to Spain) Act (1 Edw. 8 & 1 Geo. 6, c. 1).
1937	Merchant Shipping (Spanish Frontiers Observation) Act (1 Edw. 8 & 1 Geo. 6 c. 19).
1937	Merchant Shipping Act (1 Edw. 8 & 1 Geo. 6, c. 23).
1937	Merchant Shipping (Superannuation Contributions) Act (1 Geo. 6, c. 4).
1940	Merchant Shipping (Salvage) Act (3 & 4 Geo. 6, c. 43).

# [THE] MERGED STATES (LAWS) ACT, 1949

(ACT LIX OF 1949)

[The Act printed here is as on 31-8-1960.]

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### SECTIONS

1. Short title and commencement.
2. Definitions.
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4. Interpretation of laws as extended.
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7. Powers of Courts and other authorities for purposes of facilitating application of laws.

### THE SCHEDULE.

## STATEMENT OF OBJECTS AND REASONS

"With effect from the 1st August, 1949, a large number of Acceding States which have ceded full jurisdiction to the Dominion Government, and which were being previously administered under the Extra-Provincial Jurisdiction Act, 1947 (XLVII of 1947) [now the foreign jurisdiction Act, 1947], have either been finally merged in the adjoining Governors' Provinces [now the States] or constituted into new Chief Commissioners' Provinces [now the Union territories] by orders under section 290-A of the Government of India Act, 1935. The existing laws in the merged States will, however, continue, until repealed, modified or amended by a competent Legislature or other competent authority.

2. A considerable number of Central Acts and Ordinances has been applied to the merged States by Orders under the Extra-Provincial Jurisdiction Act, 1947; but the Acts and Ordinances so applied are in law distinct from the Acts and Ordinances as in force in the Provinces of India. This position which is continuing even after the 1st August, 1949 is obviously unsatisfactory. A similar situation in regard to Berar as from the 1st April, 1937, had to be resolved by the passing of the Berar Laws Act, 1941 (IV of 1941). Considering the large number of island territories which stand merged in the Governors'

Provinces from the 1st August, 1949, it is desirable to provide for the *proprio vigore* extension of the more important Central Acts and Ordinances and the Bengal State Prisoners Regulation, 1818 (III of 1818), to all the merged States, including those which have been constituted into Chief Commissioners' Provinces. Hence this Bill which has been prepared in consultation with the Ministries of the Government of India, the Provincial Governments and the Chief Commissioners' Provinces concerned.

3. It will be observed from clause (3) of the Bill that, in so far as the Governor's Provinces are concerned, the *proprio vigore* extension to the merged States of the laws specified in the Schedule to the Bill will not be fully affected by the Central Act and that corresponding supplementary legislation by the Provinces will be necessary. As it is obviously desirable that the Central Act and the Provincial legislation should come into force on the same day, a commencement clause stating that this Act shall come into force on the 1st January, 1950, has been included in the Bill, and the Provincial Governments will be requested to bring their corresponding legislation into force on the same day."

—Gaz. of Ind., 1949, Pt. V, p. 401.

# [THE] MERGED STATES (LAWS) ACT, 1949

(ACT LIX OF 1949)\*

[26th December, 1949.]

*An Act to extend certain laws to certain areas administered as parts of Governor's Provinces or as Chief Commissioners' Provinces.*

WHEREAS by Orders under section 290A of the Government of India Act, 1935, provision has been made for the administration of certain areas either as if they formed part of an adjoining Governor's Province or as if they were a Chief Commissioner's Province;

AND WHEREAS it is expedient to provide that certain laws should be extended to, and by virtue of such extension, be in force in, the said areas ;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1949, Pt. V, page 401.  
This Act stands unmodified by A. L. O., 1950.

### 1. Short title and commencement.

(1) This Act may be called THE MERGED STATES (LAWS) ACT, 1949.

(2) It shall come into force on the 1st day of January, 1950.

## 2. Definitions.

In this Act,—

- (a) the expressions “absorbing Province” and “merged State” have the same meanings as in the States’ Merger (Governors’ Provinces) Order, 1949,<sup>a</sup> as amended by the States’ Merger (United Provinces) Order, 1949<sup>b</sup>; and
- (b) the expression “new Provinces” means the Chief Commissioner’s Provinces constituted by the States’ Merger (Chief Commissioner’s Provinces) Order, 1949,<sup>c</sup> as amended by the States’ Merger (United Provinces) Order, 1949.<sup>b</sup>

[a] See Notfn. No. S. O. 25, D/- 27-7-1949, published in Gaz. of Ind., 1949, Extra., p. 1317. [b] See Notfn. No. S. O. 27, D/- 29-11-1949, *ibid.*, p. 2611. [c] See Notfn. No. S. O. 26, D/- 30-7-1949, *ibid.*, p. 134

## 3. Extension of laws.

(1) The Acts, Ordinances and Regulation specified in the Schedule are hereby extended to, and shall be in force in, all the new Provinces.

(2) So much of any of the Acts, Ordinances and Regulation specified in the Schedule as extends to any absorbing Province and relates to matters with respect to which the Dominion Legislature has power to make laws for a Governor’s Province is hereby extended to, and shall be in force in, all the merged States which are now administered as part of that Province.

(3) If any of the said Acts, Ordinances and Regulation as in force in any absorbing Province immediately before the commencement of this Act is subject to any amendments made by the Legislature of that Province, that Act, Ordinance or Regulation shall be deemed to be extended to, and to be in force in, all the merged States which are now administered as part of that Province, subject to so much of the said amendments as relate to matters with respect to which the Dominion Legislature has power to make laws for a Governor’s Province.

## 4. Interpretation of laws as extended.

In any Act, Ordinance or Regulation specified in the Schedule, notwithstanding anything contained in the General Clauses Act, 1897,—

- (a) any reference, by whatever form of words, to the acceding States shall be construed as not including a reference to any of the merged States or to any of the States (other than the United State of Saurashtra) mentioned in the States’ Merger (Chief Commissioners’ Provinces) Order, 1949 as amended by the States’ Merger (United Provinces) Order, 1949;
- (b) any reference, by whatever form of words, to Indian British subjects shall be deemed to include a reference to persons who, immediately before the 1st day of August, 1949, were subjects of any of the merged States or of any of the States (other than the United State of Saurashtra) mentioned in the States’ Merger (Chief Commissioners’ Provinces) Order, 1949, as amended by the States’ Merger (United Provinces) Order, 1949;
- (c) any reference, by whatever form of words, to the Provinces generally or to the Chief Commissioners’ Provinces generally shall be construed as including a reference to the new Provinces; and
- (d) any reference, by whatever form of words, to an absorbing Province shall be construed as including a reference to the merged States which are now administered as part of that Province.

### Section 3 — Note 1

[1] Though this Act which came into force on 1-1-1950 enforced the Code of Criminal Procedure in all Part C States, yet that Code is not in force in the subsequently created Part C State of Manipur because the Part C

State Laws Act of 1950 has excluded the applicability of that Code to that State. 1955 Manipur 41 (47) [(S) AIR V 42 C 9] : 1955 Cr i L Jour 1603.

## 5. Repeal of corresponding laws.

If immediately before the commencement of this Act there is in force in any of the new Provinces or merged States an Act, Ordinance, Regulation or other law corresponding to an Act, Ordinance or Regulation specified in the Schedule, whether such Act, Ordinance or Regulation is in force by virtue of an Order under the Extra-Provincial Jurisdiction Act, 1947,\* or by virtue of any other legislative power, such corresponding law shall upon the commencement of this Act,—

(a) in a new Province, stand repealed, and

(b) in a merged State, stand repealed to the extent to which the law relates to matters with respect to which the Dominion Legislature has power to make laws for a Governor's Province.

[a] Now the Foreign Jurisdiction Act, 1947.

## 6. Savings.

(1) The repeal by section 5 of this Act of any corresponding law in force in the new Provinces or merged States immediately before the commencement of this Act shall not affect—

(a) the previous operation of any such law, or

### Section 5 — Note 1

[1] A law will be deemed to be a corresponding law, as contemplated by S. 5, Merged States (Laws) Act, if its purpose and object are the same as those of the Central Acts which have been extended to a merged State by this Act. The Courts of law will have to be guided more by the purpose and the object of the enactment than by the similarities or dissimilarities though the similarities and dissimilarities will have to be taken into consideration in determining the object and purpose of the Acts in question. 1956 Bhopal 33 (34) [AIR V 43 C 20].

[2] The object and purpose of the Bhopal Charitable and Religious Trusts Act being the same as those of the Civil P. C., the Charitable Endowments Act (1890) and the Charitable and Religious Trusts Act (1920) which were extended by this Act to Bhopal State, that Act has become inoperative in the State of Bhopal since 1-1-1950. 1956 Bhopal 33 (36) [AIR V 43 C 20].

[3] When the Court-fees Act of 1870 became enforceable without any qualification under this Act in Himachal Pradesh the corresponding provision of law, namely, the Court-fees Act of 1870, as amended by the Punjab Court-fees (Amendment) Act, which was in force in that State stood repealed under S. 5 of this Act. 1952 Him Pra 60 (61) [AIR V 39] + 1954 Him Pra 52 (54) [AIR V 41 C 30].

[4] The Court-fees Act, 1870 continues in force in the Bashahr State as amended by Para. 36 of the Himachal Pradesh (Courts) Order 1948, despite the provisions of S. 5 of Merged States (Laws) Act 1949. 1954 Him Pra 26 (28) [AIR V 41 C 12]. (AIR 1952 Him Pra 60, *Distinguished*.)

[5] The Essential Supplies (Temporary Powers) Act, 1946 and the Tripura State Cotton and Yarn Control Order (1358 T. E.) are not corresponding laws within the meaning of S. 5 of this Act. Hence the extension of the

Central Act to the Tripura State did not result in the repeal of the Control Order. 1952 Tripura 18 (20) [AIR V 39] : 1952 Cri L Jour 1642.

[6] The Bombay Police Act 4 of 1890 which was in force in Kutch on 31-12-1949 does not correspond with the Central Act, namely, the Police Act 5 of 1881. Hence the extension of the latter Act to Kutch under the Merged States Laws Act did not result under S. 5 of that Act in the repeal of the Bombay Act. 1954 Kutch 15 (16) [AIR V 41 C 7] : 1954 Cri L Jour 770.

[7] Though this Act has enforced S. 115 of the Civil P. C. to Himachal Pradesh it has not repealed Para. 35 of Himachal Pradesh (Courts) Order of 1948. 1951 Him Pra 61 (63, 64) [AIR V 38 C 19]. (The general provisions of S. 115, Civil P. C. must be construed as excluding from its ambit the matters provided for by the special provisions of the Himachal Pradesh (Courts) Order. *Held further* that assuming that the Order of 1948 which only amended the Order of 1943 was repealed by this Act it did not affect Para. 35 which became a part of the Order of 1943 itself as a result of the amendment.)

### Section 6 — Note 1

[1] Where on the date on which a mortgage was executed the rights and liabilities of parties thereto were governed by S. 49 of Bhopal Civil P. C. those rights and liabilities should be determined only in accordance with that Code even after its repeal and the extension of the Indian Civil P. C. in its place brought about by the Merged States Laws Act. 1953 Bhopal 35 (36) [AIR V 40 C 15].

[2] When immediately before the application of the Indian Limitation Act under the Merged States (Laws) Act, 1950, a plaintiff's suit is in time under the Indian Limitation

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or

(c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions of sub-section (1), anything done or any action taken, including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation, form, bye-law or scheme framed, certificate, patent, permit or licence granted or registration effected, under such corresponding law shall be deemed to have been done or taken under the corresponding provision of the Act, Ordinance or Regulation as now extended to, and in force in, the new Province or merged State and shall continue in force accordingly unless and until superseded by anything done or any action taken under the said Act, Ordinance or Regulation.

## 7. Powers of Courts and other authorities for purposes of facilitating application of laws.

For the purpose of facilitating the application in any of the new Provinces or merged States of any Act, Ordinance or Regulation specified in the Schedule, any Court or other authority may construe any such Act, Ordinance or Regulation with such alterations, not affecting the substance, as may be necessary or proper to adapt it to the matter before the Court or other authority.

### Section 6 — Note 1 (contd.)

Act as applied by the Kutch (Application of Laws) Order, it is not affected by the new Limitation Act and does not become barred as a result of the re-application of the Limitation Act by the Merged States (Laws) Act. 1951 Kutch 41 (41, 42) [AIR V 38 C 27] \* 1951 Kutch 15 (16, 17) [AIR V 38 C 14].

[3] A suit which did not become barred by the Limitation Act as applied by the Kutch (Application of Laws) Order was not entitled to the extended period of three years limitation under that Order. When such a suit is instituted after the Merged State Laws Act has been passed then the period of limitation for that suit must be reckoned only in accordance with the provisions of Indian Limitation Act as applied by that Act. Therefore the suit which is not filed within the period prescribed by that Act cannot be saved from the bar of limitation by the fact that it has been instituted within the extended period of 3 years provided by the Kutch (Application of Laws) Order. 1955 Kutch 2 (4) [AIR V 42 C 2].

[4] By the Kutch (Application of Laws) Order, 1949 which applied the Bombay Prevention of Gambling Act 4 of 1887 to the Chief Commissioner's Province of Kutch the language of S. 1 of the Bombay Act was modified so as to vest the power in the Chief Commissioner to issue a notification to bring that Act into force. This power which had become so vested in him was not lost by him as a result of the extension of the General Clauses Act to that Province by the Merged States Laws Act of 1949 which came into force on

1-1-1950. Hence even after such extension of the General Clauses Act to that Province the Chief Commissioner possessed the power to issue a notification under S. 1 of the Bombay Act and bring it into force in that Province. 1957 S C 517 (520) [(S) AIR V 44 C 79] : 1957 S C R 745 : 1957 Cri L Jour 884. (AIR 1954 Kutch 42, *Reversed*.)

[5] A company registered under Kalhandi State Company Law cannot be considered after the merger of that State an unregistered Company within the meaning of the Indian Companies Act because under S. 6 (2) of the Merged State (Laws) Act, 1949 the registration effected under Kalhandi State Company Law should be deemed, to have been done or taken under the Indian Companies Act, 1913. ('53) 57 Cal W N 61 (64).

### Section 7 — Note 1

[1] After the passing of this Act recourse to the provisions of the Punjab Court-fees (Amendment) Acts cannot be justified in Himachal Pradesh under the provisions of this section. The Punjab Act affects the substance of the Court-fees Act of 1870 and hence its application cannot be treated as amounting to merely construing the Court-fees Act of 1870 or adapting it to the matter in hand as permitted by this section. 1954 Him Pra 52 (54) [AIR V 41 C 30].



## THE SCHEDULE

[See section 3]

## LAWS EXTENDED TO THE NEW PROVINCES AND MERGED STATES

Year	Number	Short title
<i>Acts</i>		
1839	XXXII ...	... The Interest Act, 1839.
1841	X ...	... The Indian Registration of Ships Act, 1841.
1850	XI ...	... The Indian Registration of Ships Act (1841) Amendment Act, 1850.
1850	XVIII ...	... The Judicial Officer's Protection Act, 1850.
1850	XIX ...	... The Apprentices Act, 1850.
1850	XXI ...	... The Caste Disabilities Removal Act, 1850.
1850	XXXIV ...	... The State Prisoners Act, 1850.
1850	XXXVII ...	... The Public Servants (Inquiries) Act, 1850.
1855	XII ...	... The Legal Representatives' Suits Act, 1855.
1855	XIII ...	... The Indian Fatal Accidents Act, 1855.
1856	IX ...	... The Indian Bills of Lading Act, 1856.
1856	XV ...	... The Hindu Widows' Re-marriage Act, 1856.
1857	XIII ...	... The Opium Act, 1857.
1858	III ...	... The State Prisoners Act, 1858.
1860	XXI ...	... The Societies Registration Act, 1860.
1860	XLV ...	... The Indian Penal Code, 1860.
1861	V ...	... The Police Act, 1861.
1862	III ...	... The Government Seal Act, 1862.
1863	XXIII ...	... The Waste-Lands (Claims) Act, 1863.
1865	III ...	... The Carriers Act, 1865.
1866	XXI ...	... The Native Converts' Marriage Dissolution Act, 1866.
1867	XVI ...	... The Acting Judges Act, 1867.
1867	XXV ...	... The Press and Registration of Books Act, 1867.
1869	IV ...	... The Indian Divorce Act, 1869.
1870	VII ...	... The Court-fees Act, 1870.
1871	I ...	... The Cattle-trespass Act, 1871.
1871	XXIII ...	... The Pensions Act, 1871.
1871	XXXI ...	... The Indian Weights and Measures of Capacity Act, 1871.
1872	I ...	... The Indian Evidence Act, 1872.
1872	III ...	... The Special Marriage Act, 1872.
1872	IX ...	... The Indian Contract Act, 1872.
1872	XV ...	... The Indian Christian Marriage Act, 1872.
1873	V ...	... The Government Savings Banks Act, 1873.
1873	X ...	... The Indian Oaths Act, 1873.
1874	III ...	... The Married Women's Property Act, 1874.
1874	IV ...	... The Foreign Recruiting Act, 1874.
1875	IX ...	... The Indian Majority Act, 1875.
1875	XVIII ...	... The Indian Law Reports Act, 1875.
1877	I ...	... The Specific Relief Act, 1877.
1878	I ...	... The Opium Act, 1878.
1878	VI ...	... The Indian Treasure-trove Act, 1878.
1878	VIII ...	... The Sea Customs Act, 1878.
1878	XI ...	... The Indian Arms Act, 1878.
1879	XVIII ...	... The Legal Practitioners Act, 1879.
1880	I ...	... The Religious Societies Act, 1880.
1880	XIII ...	... The Vaccination Act, 1880.
1881	XI ...	... The Municipal Taxation Act, 1881.
1881	XXVI ...	... The Negotiable Instruments Act, 1881.
1882	II ...	... The Indian Trusts Act, 1882.
1882	IV ...	... The Transfer of Property Act, 1882.
1882	VII ...	... The Powers-of-Attorney Act, 1882.
1884	IV ...	... The Indian Explosives Act, 1884.
1885	XVIII ...	... The Land Acquisition (Mines) Act, 1885.
1886	VI ...	... The Births, Deaths and Marriages Registration Act, 1886.
1886	XI ...	... The Indian Tramways Act, 1886.
1887	VII ...	... The Suits Valuation Act, 1887.
1887	IX ...	... The Provincial Small Cause Courts Act, 1887.
1888	III ...	... The Police Act, 1888.
1889	IV ...	... The Indian Merchandise Marks Act, 1889.
1890	I ...	... The Revenue Recovery Act, 1890.
1890	VI ...	... The Charitable Endowments Act, 1890.

Year	Number	Short title
<i>Acts—(con.)</i>		
1890	VIII ...	The Guardians and Wards Act, 1890.
1890	XI ...	The Prevention of Cruelty to Animals Act, 1890.
1891	XVIII ...	The Bankers' Books Evidence Act, 1891.
1893	IV ...	The Partition Act, 1893.
1894	I ...	The Land Acquisition Act, 1894.
1894	IX ...	The Prisons Act, 1894.
1897	III ...	The Epidemic Diseases Act, 1897.
1897	IV ...	The Indian Fisheries Act, 1897.
1897	X ...	The General Clauses Act, 1897.
1898	III ...	The Lepers Act, 1898.
1898	V ...	The Code of Criminal Procedure, 1898.
1898	VI ...	The Indian Post Office Act, 1898.
1898	IX ...	The Live-stock Importation Act, 1898.
1899	II ...	The Indian Stamp Act, 1899.
1899	IV ...	The Government Buildings Act, 1899.
1900	III ...	The Prisoners Act, 1900.
1901	II ...	The Indian Tolls (Army and Air Force) Act, 1901.
1903	VII ...	The Indian Works of Defence Act, 1903.
1903	XIV ...	The Indian Foreign Marriage Act, 1903.
1903	XV ...	The Indian Extradition Act, 1903.
1904	VII ...	The Ancient Monuments Preservation Act, 1904.
1905	IV ...	The Indian Railway Board Act, 1905.
1906	III ...	The Indian Coinage Act, 1906.
1908	V ...	The Code of Civil Procedure, 1908.
1908	VI ...	The Explosive Substances Act, 1908.
1908	IX ...	The Indian Limitation Act, 1908.
1908	XIV ...	The Indian Criminal Law Amendment Act, 1908.
1908	XV ...	The Indian Ports Act, 1908.
1908	XVI ...	The Indian Registration Act, 1908.
1909	IV ...	The Whipping Act, 1909.
1909	VII ...	The Anand Marriage Act, 1909.
1910	IX ...	The Indian Electricity Act, 1910.
1911	II ...	The Indian Patents and Designs Act, 1911.
1911	VIII ...	The Indian Army Act, 1911.
1911	X ...	The Prevention of Seditious Meetings Act, 1911.
1912	IV ...	The Indian Lunacy Act, 1912.
1913	II ...	The Official Trustees Act, 1913.
1913	III ...	The Administrator General's Act, 1913.
1913	VI ...	The Mussalman Wakf Validating Act, 1913.
1913	VII ...	The Indian Companies Act, 1913.
1914	II ...	The Destructive Insects and Pests Act, 1914.
1914	III ...	The Indian Copyright Act, 1914.
1914	IX ...	The Local Authorities Loans Act, 1914.
1916	VII ...	The Indian Medical Degrees Act, 1916.
1916	XV ...	The Hindu Disposition of Property Act, 1916.
1917	V ...	The Destruction of Records Act, 1917.
1917	XVIII ...	The Post Office Cash Certificates Act, 1917.
1918	II ...	The Cinematograph Act, 1918.
1918	XXII ...	The Bronze Coin (Legal Tender) Act, 1918.
1919	I ...	The Local Authorities Pensions and Gratuities Act, 1919.
1919	XII ...	The Poisons Act, 1919.
1920	V ...	The Provincial Insolvency Act, 1920.
1920	X ...	The Indian Securities Act, 1920.
1920	XIV ...	The Charitable and Religious Trusts Act, 1920.
1920	XXIII ...	The Indian Rifles Act, 1920.
1920	XXXIII ...	The Identification of Prisoners Act, 1920.
1920	XXXIX ...	The Indian Elections Offences and Inquiries Act, 1920.
1920	XLVII ...	The Imperial Bank of India Act, 1920.
1921	XVIII ...	The Maintenance Orders Enforcement Act, 1921.
1922	XXII ...	The Police (Incitement to Disaffection) Act, 1922.
1923	IV ...	The Indian Mines Act, 1923.
1923	V ...	The Indian Boilers Act, 1923.
1923	VI ...	The Cantonments (House-Accommodation) Act, 1923.
1923	VIII ...	The Workmen's Compensation Act, 1923.
1923	XIV ...	The Indian Cotton Cess Act, 1923.
1923	XIX ...	The Indian Official Secrets Act, 1923.
1923	XXI ...	The Indian Merchant Shipping Act, 1923.
1923	XXIII ...	The Legal Practitioners (Women) Act, 1923.

Year	Number	Short title
<i>Acts—(con.)</i>		
1923	XLII	... The Mussalman Wakf Act, 1923.
1924	II	... The Cantonments Act, 1924.
1924	IV	... The Central Board of Revenue Act, 1924.
1924	XIX	... The Land Customs Act, 1924.
1925	IV	... The Indian Soldiers (Litigation) Act, 1925.
1925	XII	... The Cotton Ginning and Pressing Factories Act, 1925.
1925	XIX	... The Provident Funds Act, 1925.
1925	XXVI	... The Indian Carriage of Goods by Sea Act, 1925.
1925	XXXIX	... The Indian Succession Act, 1925.
1926	III	... The Government Trading Taxation Act, 1926.
1926	VII	... The Indian Naturalization Act, 1926.
1926	XII	... The Contempt of Courts Act, 1926.
1926	XVI	... The Indian Trade Unions Act, 1926.
1926	XXI	... The Legal Practitioners (Fees) Act, 1926.
1926	XXXVIII	... The Indian Bar Councils Act, 1926.
1927	XVI	... The Indian Forest Act, 1927.
1927	XVII	... The Indian Lighthouse Act, 1927.
1928	XII	... The Hindu Inheritance (Removal of Disabilities) Act, 1928.
1929	II	... The Hindu Law of Inheritance (Amendment) Act, 1929.
1929	XIX	... The Child Marriage Restraint Act, 1929.
1930	II	... The Dangerous Drugs Act, 1930.
1930	III	... The Indian Sale of Goods Act, 1930.
1930	XXIV	... The Indian Lac Cess Act, 1930.
1930	XXX	... The Hindu Gains of Learning Act, 1930.
1930	XXXII	... The Mussalman Wakf Validating Act, 1930.
1931	XVI	... The Provisional Collection of Taxes Act, 1931.
1931	XXIII	... The Indian Press (Emergency Powers) Act, 1931.
1932	IX	... The Indian Partnership Act, 1932.
1932	XI	... The Foreign Relations Act, 1932.
1932	XIV	... The Indian Air Force Act, 1932.
1932	XX	... The Port Haj Committees Act, 1932.
1932	XXII	... The Tea Districts Emigrant Labour Act, 1932.
1932	XXIII	... The Criminal Law Amendment Act, 1932.
1933	II	... The Children (Pledging of Labour) Act, 1933.
1933	XXVII	... The Indian Medical Council Act, 1933.
1934	II	... The Reserve Bank of India Act, 1934.
1934	VIII	... The Khaddar (Name Protection) Act, 1934.
1934	XIX	... The Indian Dock Labourers Act, 1934.
1934	XX	... The Indian Carriage by Air Act, 1934.
1934	XXII	... The Indian Aircraft Act, 1934.
1934	XXX	... The Petroleum Act, 1934.
1934	XXXII	... The Indian Tariff Act, 1934.
1934	XXXIV	... The Indian Navy (Discipline) Act, 1934.
1936	III	... The Parsi Marriage and Divorce Act, 1936.
1936	IV	... The Payment of Wages Act, 1936.
1937	I	... The Agricultural Produce (Grading and Marking) Act, 1937.
1937	XVIII	... The Hindu Women's Rights to Property Act, 1937.
1937	XIX	... The Arya Marriage Validation Act, 1937.
1937	XXV	... The Federal Court Act, 1937.
1937	XXVI	... The Muslim Personal Law (Shariat) Application Act, 1937.
1938	IV	... The Insurance Act, 1938.
1938	V	... The Manoeuvres, Field Firing and Artillery Practice Act, 1938.
1938	VIII	... The Indian Tea Control Act, 1938.
1938	XX	... The Criminal Law Amendment Act, 1938.
1938	XXIV	... The Employers' Liability Act, 1938.
1938	XXVI	... The Employment of Children Act, 1938.
1939	IV	... The Motor Vehicles Act, 1939.
1939	VIII	... The Dissolution of Muslim Marriages Act, 1939.
1939	IX	... The Standards of Weight Act, 1939.
1939	XIX	... The Coal Mines Safety (Stowing) Act, 1939.
1939	---	... The Indian Naval Reserve Forces (Discipline) Act, 1939.
1940	V	... The Trade Marks Act, 1940.
1940	X	... The Arbitration Act, 1940.
1940	XXIII	... The Drugs Act, 1940.

Year	Number	Short title
<i>Acts—(con.)</i>		
1940	XXVII ..	... The Agricultural Produce Cess Act, 1940.
1941	XIX ..	... The Mines Maternity Benefit Act, 1941.
1941	XX ..	... The Professions Tax Limitation Act, 1941.
1941	XXI ..	... The Federal Court Act, 1941.
1941	XXV ..	... The Railways (Local Authorities' Taxation) Act, 1941.
1942	VII ..	... The Coffee Market Expansion Act, 1942.
1942	XVIII ..	... The Weekly Holidays Act, 1942.
1942	XIX ..	... The Industrial Statistics Act, 1942.
1942	XXVI ..	... The Federal Court (Supplemental Powers) Act, 1942.
1943	IX ..	... The Reciprocity Act, 1943.
1944	I ..	... The Central Excises and Salt Act, 1944.
1944	X ..	... The Indian Coconut Committee Act, 1944.
1944	XVIII ..	... The Public Debt Act, 1944.
1946	IX ..	... The Indian Oilseeds Committee Act, 1946.
1946	XVII ..	... The Protective Duties Act, 1946.
1946	XIX ..	... The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.
1946	XX ..	... The Industrial Employment (Standing Orders) Act, 1946.
1946	XXII ..	... The Mica Mines Labour Welfare Fund Act, 1946.
1946	XXIV ..	... The Essential Supplies (Temporary Powers) Act, 1946.
1946	XXV ..	... The Delhi Special Police Establishment Act, 1946.
1946	XXVIII ..	... The Hindu Marriage Disabilities Removal Act, 1946.
1947	II ..	... The Prevention of Corruption Act, 1947.
1947	VII ..	... The Foreign Exchange Regulation Act, 1947.
1947	XII ..	... The Railways (Transport of Goods) Act, 1947.
1947	XIV ..	... The Industrial Disputes Act, 1947.
1947	XV ..	... The Armed Forces (Emergency Duties) Act, 1947.
1947	XVI ..	... The Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947.
1947	XVIII ..	... The Imports and Exports (Control) Act, 1947.
1947	XXIV ..	... The Rubber (Production and Marketing) Act, 1947.
1947	XXIX ..	... The Capital Issues (Continuance of Control) Act, 1947.
1947	XXXI ..	... The Antiquities (Export Control) Act, 1947.
1947	XXXII ..	... The Coal Mines Labour Welfare Fund Act, 1947.
1947	XLIII ..	... The United Nations (Security Council) Act, 1947.
1947	XLVI ..	... The United Nations (Privileges and Immunities) Act, 1947.
1948	I ..	... The Federal Court (Enlargement of Jurisdiction) Act, 1947.
1948	VIII ..	... The Pharmacy Act, 1948.
1948	IX ..	... The Dockworkers (Regulation of Employment) Act, 1948.
1948	XI ..	... The Minimum Wages Act, 1948.
1948	XII ..	... The Rehabilitation Finance Administration Act, 1948.
1948	XV ..	... The Industrial Finance Corporation Act, 1948.
1948	XVI ..	... The Dentists Act, 1948.
1948	XXII ..	... The Indian Power Alcohol Act, 1948.
1948	XXIX ..	... The Atomic Energy Act, 1948.
1948	XXXII ..	... The Road Transport Corporations Act, 1948.
1948	XXXIV ..	... The Employees' State Insurance Act, 1948.
1948	XXXVII ..	... The Census Act, 1948.
1948	XL ..	... The Indian Matrimonial Causes (War Marriages) Act, 1948.
1948	XLVI ..	... The Coal Mines Provident Fund and Bonus Schemes Act, 1948.
1948	XLVII ..	... The Displaced Persons (Institution of Suits) Act, 1948.
1948	LIII ..	... The Mines and Minerals (Regulation and Development) Act, 1948.
1948	LIV ..	... The Electricity (Supply) Act, 1948.
1948	LXI ..	... The Central Silk Board Act, 1948.
1948	LXIII ..	... The Factories Act, 1948.
1949	X ..	... The Banking Companies Act, 1949.
1949	XIII ..	... The Central Tea Board Act, 1949.
1949	XXI ..	... The Hindu Marriages Validity Act, 1949.
1949	XXIII ..	... The Influx from Pakistan (Control) Act, 1949.
1949	XXV ..	... The Displaced Persons (Legal Proceedings) Act, 1949.
1949	XXX ..	... The Public Companies (Limitation of Dividends) Act, 1949.

Year	Number	Short title
<i>Acts—(con.)</i>		
1949	XXXVIII	The Chartered Accountants Act, 1949.
		ORDINANCES
1940	IV	The Currency Ordinance, 1940.
1941	XI	The Essential Services (Maintenance) Ordinance, 1941.
1942	XI.I	The Armed Forces (Special Powers) Ordinance, 1942.
1944	XXXVIII	The Criminal Law Amendment Ordinance, 1944.
1944	XLII	The Post Office National Savings Certificates Ordinance, 1944.
1945	XLVII	The International Monetary Fund and Bank Ordinance, 1945.
1949	XI	The Industrial Tribunals Payment of Bonus (National Savings Certificates) Ordinance, 1949.
		REGULATION
1818	III	The Bengal State Prisoners Regulation, 1818.

## [THE] METAL TOKENS ACT, 1889

## (ACT I OF 1889)

[The Act printed here is as on 31-8-1960.]

## CONTENTS

## SECTIONS

1. Title and extent.
2. Definition.
3. Prohibition of making by private persons of pieces of metal to be used as money.
4. Penalty for unlawful making, issue or possession of such pieces.
5. Cognizance of offences under the last foregoing section.
6. Application of certain of the foregoing provisions of this Act to importation of pieces of metal for use as money.
7. [*Repealed.*]
8. Prohibition of receipt by local authorities and railways as money of metal which is not coin.
9. [*Repealed.*]

## STATEMENT OF OBJECTS AND REASONS

"The main object of this Bill is to prohibit the manufacture and issue, and restrict the circulation, of stamped or unstamped pieces of copper such as, during the recent depression in the value of that metal, private traders at Jugadri, Gaya, Ludhiana, Beawar and other places have been making and issuing in large quantities for use as money. The pieces circulate at much above their intrinsic value, and their circulation both deprives the taxpayers of this country of that profit on coin-

age of copper which belongs to every Government, and perpetuates the currency of an inconvenient form of coin.

The other object of the Bill is to suppress the manufacture in British India of coins resembling or apparently intended to resemble or pass for coins which are legal tender or in actual use and circulation in any foreign country."

— Gaz. of Ind. 1888, Part V, page 19.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by A. O. 1937; A. L. O., 1950: 2 A. L. O., 1956.  
—Amended in Bombay, by Bom. Act XXIII of 1951.

—Extended by Act XX of 1954.  
—Repealed in part by Acts V of 1896; X of 1914; I of 1938.

[THE] METAL TOKENS ACT, 1889  
(ACT I OF 1889)<sup>a</sup>

[1st February, 1889.]

*An Act for the protection of coinage and other purposes.*

WHEREAS it is expedient to prohibit the making, or the possession for issue, or the issue, by private persons of pieces of metal for use as money;

AND WHEREAS it is also expedient to amend section 28 of the Indian Penal Code;

It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1888, Pt. V, p. 19; for Report of the Select Committee, see *ibid*, pt. IV, page 3.

This Act has been extended on and from 30-4-1954 to Angul in the State of Orissa, by the Absorbed Areas (Laws) Act, 1954 (XX of 1954), Ss. 2 & 3 and Sch. III.

### 1. Title and extent.

(1) This Act may be called THE METAL TOKENS ACT, 1889.

(2) It extends to the whole of India except <sup>a</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part B States]; <sup>b</sup>[\* ]

<sup>c</sup>[\* \* \* \* \*]

[a] Substituted for "Part B States," by 2 A. L. O., 1956. Immediately before 1-11-1956, the following were Part B States : Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. [b] The word "and" was omitted by the Repealing and Amending Act, 1914 (X of 1914), S. 3 and Sch. II. [c] Sub-section (3) was omitted, *ibid*.

### 2. Definition.

In this Act "issue" means to put a piece of metal into circulation for the first time for use as money in <sup>a</sup>[the territories <sup>b</sup>[to which this Act extends] (in this section and in section 6 referred to as "the said territories")], such piece having been made in contravention of this Act or brought into <sup>a</sup>[the said territories] by sea or by land in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878.

[a] Substituted for "the Provinces" by A. L. O., 1950. [b] Substituted for "for the time being comprised in Part A States and Part C States," by 2 A. L. O., 1956.

### 3. Prohibition of making by private persons of pieces of metal to be used as money.

No piece of copper or bronze or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the Central Government.

### 4. Penalty for unlawful making, issue or possession of such pieces.

(1) In either of the following cases, namely:—

(a) if any person makes in contravention of the last foregoing section, or issues or attempts to issue, any such piece as is mentioned in that section,

(b) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control any such piece as is mentioned in the last foregoing section, with intent to issue the piece,

the person shall be punished,—

(i) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both; or,

(ii) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both.

(2) If any person is convicted of an offence under sub-section (1), he shall, in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of

such pieces, which may have been found in his possession, custody or control.

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person.

*Note.*—The offence is made cognizable by the next section.

### **5. Cognizance of offences under the last foregoing section.**

(1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section shall be a cognizable offence.

(2) Notwithstanding anything in the Code of Criminal Procedure, 1882\*, no other offence punishable under section 4 shall be a cognizable offence, or beyond the limits of a presidency-town be taken cognizance of by any Magistrate, except a District Magistrate or Sub-divisional Magistrate, without the previous sanction of the District Magistrate or Sub-divisional Magistrate.

[a] See now the Code of Criminal Procedure, 1898 (V of 1898).

### **STATE AMENDMENT**

#### **BOMBAY**

In sub-section (2), *omit* the words "except District or Sub-divisional Magistrate."

—Bom. Act XXIII of 1951, Sch. Part II [1-7-1953].

### **6. Application of certain of the foregoing provisions of this Act to importation of pieces of metal for use as money.**

If at any time the Central Government sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into \*[the said territories] of any such pieces of metal as are mentioned in section 3, it may by the notification direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in \*[the said territories], instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4 and sub-section (1) of section 5, or of either sub-section, in relation to the offence of making such pieces shall, notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act.

[a] Substituted for "the Provinces," by A.L.O., 1950.

### **7. Addition to section 98, Act X of 1882. [Repealed by the Code of Criminal Procedure, 1898 (V of 1896).]**

### **8. Prohibition of receipt by local authorities and railways as money of metal which is not coin.**

(1) No piece of metal which is not coin as defined\* in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority.

(2) If any person on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees.

[a] Section 230 of the Penal Code gives the definition of "coin" as follows : "Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used."

### **9. Amendment of section 28 of the Indian Penal Code. [Repealed by the Repealing Act, 1938 (I of 1938), S. 2 and Sch.]**

# [THE] MICA MINES LABOUR WELFARE FUND ACT, 1946

(ACT XXII of 1946)

[The Act printed here is as on 31-8-1960.]

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### SECTIONS

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|---|--|
| 1. Short title and extent.              | 4. Advisory Committees.                |
| 2. Imposition and collection of a cess. | 5. Appointment and powers of officers. |
| 3. The Mica Mines Labour Welfare Fund.  | 6. Power to make rules.                |

### STATEMENT OF OBJECTS AND REASONS

"It is urgently necessary to improve the living and working conditions of the labour employed in the Mica Mining Industry. Though the industry is one of great importance to the country labour conditions are most deplorable and Government are convinced that they must intervene by initiating a scheme of Welfare Measures. A member of the Labour Investigating Committee was deputed to study the labour conditions in the Mica Mining areas and he has submitted a report making a number of recommendations. These *inter alia* include the working out of a comprehensive welfare scheme designed to improve the standard of living of the workers and to secure for them the requisite medical, educational, housing, water supply and other

facilities. The present proposals relate only to the welfare of labour employed in the mines as distinct from factory labour for which the responsibility lies with the Provincial Governments. The mining industry has been consulted and there is a general agreement that a cess should be imposed on all exports of mica to finance the welfare scheme. While it may not be possible to find out immediately large sums of money required for the purpose Government feel that a start in this direction must be made at once by the creation of a Fund by the imposition of an *ad valorem* duty on all exports of mica. The Bill is designed to give effect to these proposals."

— Gaz. of Ind., 1946, Part V, page 257.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Act III of 1951.
- Adapted by A.L.O., 1950.
- Extended by Acts LIX of 1949; XXX of 1950.

# [THE] MICA MINES LABOUR WELFARE FUND ACT, 1946

(ACT XXII OF 1946)\*

[23rd April, 1946.]

*An Act to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry.*

**WHEREAS** it is expedient to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1946, Pt. V, p. 257; for Report of Select Committee, see *ibid*, p. 291.

This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

### 1. Short title and extent.

(1) This Act may be called THE MICA MINES LABOUR WELFARE FUND ACT, 1946.

(2) It extends to the whole of India \* [except the State of Jammu and Kashmir].

[a] Substituted for "except Part B States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

### 2. Imposition and collection of a cess.

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be levied and collected, as a cess for the purposes of this Act, on all mica, in whatever state, exported from \* [the territories to which this Act extends] a duty of customs at such rate, not exceeding six and one-quarter *per centum ad valorem*, as may from



time to time be fixed by the Central Government by notification in the Official Gazette :

Provided that until the 1st day of April, 1947, the rate of duty so fixed shall not exceed two and one-half *per centum ad valorem*.

(2) On the last day of each month or as soon thereafter as may be convenient, there shall be paid to the credit of a fund to be called the Mica Mines Labour Welfare Fund (hereinafter referred to as the Fund) the proceeds of the duty of customs recovered during that month after deduction of the expenses, if any, for collection and recovery.

[a] *Substituted* for "Part A States and Part C States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

*Note* :—Creation of the Mica Mines Labour Welfare Fund under this Act is to meet the expenses in carrying out welfare schemes, relating to labour employed in mica mines as distinct from factory labour. How the Fund has to be applied is indicated in the next section.

### 3. The Mica Mines Labour Welfare Fund.

(1) The Fund shall be applied by the Central Government to meet expenditure incurred in connection with measures in the opinion of the Central Government necessary or expedient to promote the welfare of labour employed in the mica mining industry.

(2) Without prejudice to the generality of sub-section (1), the Fund may be utilised to defray—

(a) the costs of measures for the benefit of labour employed in the mica mining industry directed towards—

- (i) the improvement of public health and sanitation, the prevention of disease, and the provision and improvement of medical facilities,
- (ii) the provision and improvement of water supplies and facilities for washing,
- (iii) the provision and improvement of educational facilities,
- (iv) the improvement of standards of living, including housing and nutrition, the amelioration of social conditions and the provision of recreational facilities,

(v) the provision of transport to and from work ;

(b) the grant to a State Government, a local authority or the owner, agent or manager of a mica mine, of money in aid of any scheme approved by the Central Government for any purpose for which the Fund may be utilised ;

(c) the cost of administering the Fund, including the allowances, if any, of members of the Advisory Committees constituted under section 4, and the salaries and the allowances, if any, of officers appointed under section 5 ;

(d) any other expenditure which the Central Government may direct to be defrayed from the Fund.

(3) The Central Government shall have power to decide whether any particular expenditure is or is not debitable to the Fund, and its decision shall be final.

(4) The Central Government shall publish annually in the Official Gazette report of the activities financed from the Fund, together with an estimate of receipts and expenditure of the Fund and a statement of accounts.

### 4. Advisory Committees.

(1) The Central Government shall constitute \*[as many Advisory Committees as it thinks fit but not exceeding one for each State], to advise the Central Government on any matters arising out of the administration of this Act or the Fund.

(2) The members of the Advisory Committees shall be appointed by the Central Government, and shall be of such number and chosen in such manner as may be prescribed by rules made under this Act :

Provided that each Committee shall include an equal number of members representing mica mine owners and workmen employed in the mica mining industry, and that at least one member of each Committee shall be a woman, and at least one member of each Committee shall be a member of the Legislature of the State concerned.

(3) The Chairman of each Advisory Committee shall be appointed by the Central Government.

(4) The Central Government shall publish in the Official Gazette the names of all members of the Advisory Committees.

[a] *Substituted* for "two Advisory Committees, one for the State of Madras and one for the State of Bihar", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

## 5. Appointment and powers of officers.

(1) The Central Government may appoint Inspectors, Welfare Administrators and such other officers as it thinks necessary to administer the Fund or to supervise or carry out the activities financed from the Fund.

(2) Every officer so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) Any Inspector or Welfare Administrator may—

- (a) with such assistance, if any, as he thinks fit, enter at any reasonable time any place which he considers it necessary to enter for the purpose of supervising or carrying out the activities financed from the Fund, and
- (b) do within such place anything necessary for the proper discharge of his duties.

## 6. Power to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules to carry into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the making of refunds, remissions and recoveries of the duty of customs imposed by sub-section (1) of section 2;
- (b) the composition of the Advisory Committees constituted under section 4, the manner in which the members thereof shall be chosen, the term of office of such members, the allowances, if any, payable to them, and the manner in which the Advisory Committees shall conduct their business;
- (c) the conditions governing the grant of money from the Fund under clause (b) of sub-section (2) of section 3;
- (d) the form of the estimate and statement referred to in sub-section (4) of section 3;
- (e) the conditions of service and the duties of all officers appointed under section 5;
- (f) the furnishing by owners or agents or managers of mica mines of statistical or other information, and the punishment by fine of failure to comply with the requirements of any rule made under this clause.

[a] See Mica Mines Labour Welfare Fund (Bihar and Madras) Rules, Gaz. of Ind., 1948 Pt. I, page 58.

**[THE] MINERAL OILS (ADDITIONAL DUTIES OF EXCISE  
AND CUSTOMS) ACT, 1958**

**(ACT XXVII of 1958)**

[The Act printed here is as on 31-8-1960.]

**C O N T E N T S**

**SECTIONS**

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| 2. Definition.   | 5. Additional duties of excise and customs not to be added to price of goods for sale. |
| 3. Levy and collection of additional duties of excise on certain mineral oils. | 6. Repeal.   |

**STATEMENT OF OBJECTS AND REASONS**

"The Mineral Oils (Additional Duties of Excise and Customs) Ordinance, 1958 (No. 6 of 1958) promulgated by the President on 30th June, 1958, provided for the levy and collection of additional duties of excise and the countervailing duties of customs on certain mineral oils. This Bill seeks to replace the provisions of the aforesaid Ordinance.

2. The Ordinance was issued to readjust the excise and customs duties in the light of the reduction in prices agreed to by the principal companies distributing mineral oil pro-

ducts in India with effect from 20-5-1958. The price reductions were not of a magnitude which even if passed on to the consuming public would be reflected to any significant extent in the consumer prices. Besides, all available resources have to be tapped for fulfilling plan targets. It was, therefore, decided that the benefit of the price reductions should accrue to Government."

—Gaz. of Ind., 1958, Extra., Pt. II-Sec. 2, p. 721.

**ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION**

—Amended by Acts LIX of 1959; XXXVIII of 1960.

**[THE] MINERAL OILS (ADDITIONAL DUTIES OF EXCISE  
AND CUSTOMS) ACT, 1958**

**(ACT XXVII OF 1958)\***

[4th September, 1958.]

*An Act to provide for the levy and collection of additional duties  
of excise and customs on certain mineral oils*

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1958, Extra., Pt. II-Sec. 2, p. 721.

**1. Short title and commencement.**

(1) This Act may be called **THE MINERAL OILS (ADDITIONAL DUTIES OF EXCISE AND CUSTOMS) ACT, 1958**.

(2) It shall be deemed to have come into force on the twentieth day of May, 1958.

**\*[2. Definition.**

In this Act "motor spirit", "kerosene", "refined diesel oils and vaporizing oil" "diesel oil, not otherwise specified" and "furnace oil" shall have the meanings respectively assigned to them in Items Nos. 6, 7, 8, 9 and 10 of the First Schedule to the Central Excises and Salt Act, 1944.]

[a] *Substituted* for former section 2 by the Central Excises (Conversion to Metric Units) Act, 1960 (XXXVIII of 1960), S. 4 (a) [date of commencement not announced up to 18-11-1960.]

**3. Levy and collection of additional duties of excise on certain mineral oils.**

(1) There shall be levied and collected in respect of the goods mentioned in column 1 of the Table hereunder duties of excise at such rates not exceeding those specified in relation thereto in column 2 of the said Table as may

be specified by the Central Government by notification in the Official Gazette, —

<sup>a</sup>[TABLE

Description of goods 1	Rate of additional duty 2
1. Motor spirit	Fifty-six rupees and five naye paise per kilolitre at fifteen degrees of Centigrade thermometer.
2. Kerosene	Twenty-six rupees and eighty naye paise per kilolitre at fifteen degrees of Centigrade thermometer.
3. Refined diesel oils and vaporizing oil ... ..	Thirty-three rupees and fifty-five naye paise per kilolitre at fifteen degrees of Centigrade thermometer.
4. Diesel oil, not otherwise specified.	Nineteen rupees and seventy naye paise per metric tonne.
5. Furnace oil. ... ..	Nineteen rupees and seventy naye paise per metric tonne.]

<sup>b</sup>[(1-A) The provisions of sub-section (1) shall be deemed to have had effect in respect of the period commencing on the 1st day of April, 1959, and ending on the 31st day of October, 1959, as if from the words “at such rates” occurring in that sub-section up to the end thereof, the following had been substituted, namely :—

“at the rates specified in relation thereto in column 2 of the said Table : —

TABLE

Description of goods 1	Rate of additional duty 2
1. Kerosene.	Twelve naye paise per imperial gallon.
2. Motor spirit.	Fourteen naye paise per imperial gallon.
3. Refined diesel oil.	Twelve naye paise per imperial gallon.
4. Vaporizing oil.	Five naye paise per imperial gallon.
5. Diesel oil, not otherwise specified.	Rupees twenty per ton.
6. Furnace oil.	Rupees Twenty per ton.]

(2) The duties of excise referred to in <sup>c</sup>[this section] in respect of the goods specified therein shall be in addition to the duties of excise chargeable in such goods under the Central Excises and Salt Act, 1944, or any other law for the time being in force.

(3) The provisions of the Central Excises and Salt Act, 1944, and the rules thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of the additional duties of excise referred to in this section as they apply in relation to the levy and collection of the duties of excise in respect of the goods specified in <sup>e</sup>[this section].

(4) Notwithstanding anything contained in this section, the Central Government may, having regard to the administrative or other difficulties, if any, which may arise in relation to the levy and collection of all or any of the additional duties of excise under this Act for any period commencing on the 20th day of May, 1958, and ending on the 29th day of June, 1958 <sup>a</sup>[or commencing on the 1st day of April, 1959, and ending on the 31st day of October, 1959, as the case may be] assess the additional duties of excise payable

by any person under this Act to be such sum as to the Central Government appears proper in the circumstances.

[a] This Table is substituted for the former Table by the Central Excises (Conversion to Metric Units) Act, 1960 (XXXVIII of 1960), S. 4 (b) [date of commencement not announced up to 18-11-1960]. The former Table was as follows : "Kerosene — 12 nP. per imperial gallon; Motor spirit — 25 nP. per imperial gallon; Refined diesel oils and vaporizing oil—15 nP. per imperial gallon; Diesel oil not otherwise specified—Rs. 20 per ton; furnace oil—Rs. 20 per ton." [b] Inserted by the Mineral Oils (Additional Duties of Excise and Customs) Amendment Act, 1959 (LIX of 1959), S. 2 [24-12-1959]. [c] Substituted for "sub-section (1)", *ibid.*

#### 4. Amendment of Act XXXII of 1934.

For so long as an additional duty of excise is levied and collected under this Act in respect of kerosene, the entry in the fourth column relating to sub-item (a) of Item No. 27 (4) of the First Schedule to the Indian Tariff Act, 1934, shall have effect as if the words, brackets and figures "plus the excise duty for the time being leviable under the Mineral Oils (Additional Duties of Excise and Customs) Act, 1958, on like articles if produced or manufactured in India" had been added thereto.

#### 5. Additional duties of excise and customs not to be added to price of goods for sale.

Notwithstanding anything contained in section 64-A of the Indian Sale of Goods Act, 1930, or in any other law for the time being in force, or in any contract or agreement, no purchaser purchasing any of the goods referred to in "[ \* \* \* ]" section 3, shall be liable to pay or be sued for, or in respect of,—

- (a) the whole or any part of the additional duties of excise leviable under this Act, or
- (b) the whole or any part of the additional duties of customs leviable under S. 4 or under the Indian Tariff Act, 1934, to the extent to which such duties have become leviable by reason of this Act,

as an addition to the contract price payable by him in respect of the goods so purchased.

*Explanation.*—In this section, "purchaser" shall not include any person in principal charge of the distribution in India of any of the goods referred to in "[ \* \* \* ]" section 3.

[a] The words, brackets and figure "sub-section. (1)" were omitted by the Mineral Oils (Additional Duties of Excise and Customs) Amendment Act, 1959 (LIX of 1959), S. 3 [24-12-1959].

*Note :* The principal companies distributing mineral oil product had agreed to reduce the prices with effect from 20-5-1958. In order to tap this source for fulfilling plan targets the Government decided that the benefit of the price reduction should accrue to them and not to the consumer and by Ordinance No. 6 of 1958, they provided for the levy and collection of additional duties of excise and the countervailing duties of custom on certain mineral oils. The present Act replaces the Ordinance. By this section, the companies are prohibited from adding this additional duties of excise and customs to the price of goods, i. e. the incidence of duties is not to be shifted to the consumer.

#### 6. Repeal.

The Mineral Oils (Additional Duties of Excise and Customs) Ordinance, 1958, is hereby repealed.

# **[THE] MINES ACT, 1952**

**(ACT XXXV of 1952)**

[The Act printed here is as on 31-8-1960.]

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**STATEMENT OF OBJECTS AND REASONS**

"The existing Indian Mines Act which relates to the regulation and inspection of mines was passed in 1923. Although it has since been amended in certain respects, the general framework has remained unchanged. Experience of the working of the Act has revealed a number of defects and deficiencies which hamper effective administration. Some of these necessitate new forms of control while others require the tightening up of the existing legal provisions. It has, therefore,

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been considered necessary to thoroughly overhaul the existing Act.

2. The proposed legislation differs from the existing law in certain respects. The more important features are mentioned below :—

- (i) At present workshops run by a mine for the maintenance of its machinery and plant in safe and efficient working order are subject to the Factories Act, 1948, which is administered by Pro-

vincial Governments. Workers in workshops such as fitters, blacksmiths, welders, electricians and others frequently work for a part of the shift underground and while so employed come within the scope of the Mines Act. It is inconvenient that the same personnel should be subject to two different Acts administered by two different authorities. It is now proposed to bring all personnel engaged solely on work relating to mines within the scope of the Mines Act. For similar reasons it is proposed to bring within the scope of the Mines Act power stations which generate power used wholly in connection with the mine concerned.

- (ii) Provision has been made in the Bill for the issue of certificates of fitness to adolescents and the appointment of certifying surgeons.
- (iii) The provisions in the existing Act regarding conservancy and sanitary conveniences are of a general nature. The Bill provides for more definite arrangements for drinking water, latrines, urinals, etc.
- (iv) It has been made obligatory on the part of the owner, agent or manager of a mine to report the contraction of any of certain notified diseases. Provision for the holding of an enquiry regarding the causes of contraction of a reported disease has also been made.
- (v) It has also been laid down that first-aid appliances should be made available underground and that they should be kept in charge of qualified personnel.
- (vi) A new chapter regarding the grant of compensatory holidays and holidays with pay has been included.
- (vii) The existing Act does not specify the rate of payment for overtime work. In the Bill the rates for overtime have been fixed at  $1\frac{1}{2}$  times the ordinary rate of wages in the case of surface workers and at twice the ordinary rate for underground workers. The working hours for all workers, both surface and

underground, have been reduced to 48 per week and no worker is to be allowed to work for more than 9 hours a day above ground and 8 hours a day below ground. The provisions in the existing Act permit workers on the surface to work for 54 hours a week or 10 hours a day and workers underground for 9 hours a day.

- (viii) It is proposed to prohibit after a certain date to be notified by the Central Government the presence of children in any part of a mine where operations connected with, or incidental to, mining processes are being carried on. The intention is that the presence of children at mines should be prohibited as soon as arrangements for the provision of elementary education can be made in collieries.
- (ix) The age limit of persons employed underground has been raised from 17 to 18 years.
- (x) At present the penalty for violation of the provisions of the Act is only fine. It is proposed to provide that the punishment may be imprisonment or fine or both. This will bring the penalty provisions in line with the penalties prescribed in the Factories Act, 1948.
- (xi) The employment of women underground is already prohibited. This prohibition will be continued. The employment of women on the surface between the hours of 7 P. M. and 6 A. M. will also be prohibited, but Provincial Governments will be empowered to relax these limits but not so as to authorise working between the hours of 10 P. M. and 5 A. M.
- (xii) Opportunity has also been taken to include in the Bill provisions relating to health, safety and comfort of workers somewhat on the lines of the Factories Act, 1948.

3. It is hoped that when the Bill is passed into law, the provisions regulating labour and safety in mines will largely be on the lines of those contained in the Factories Act, 1948.

—Gaz. of Ind., 1949, Pt. V, p. 436.

## THE MINES (AMENDMENT) ACT, 1959

(LXII of 1959)

### STATEMENT OF OBJECTS AND REASONS

"The Mines Act, 1952, was passed with a view to amending and consolidating the law relating to the regulation of labour and safety in mines. The working of the Act has shown that it requires to be amended for various reasons, e.g., clarification of certain provisions, proper enforcement of certain others and insertion of some new provisions to bring the Act in line with those contained in the Factories Act, 1948. Some of the more important amendments sought to be made relate to—

- (i) the definition of the term 'mine' to make it clear that it includes quarries and

open cast workings and also private railways, aerial ropeways, conveyors, etc.;

- (ii) a new provision to the effect that subject to certain conditions the Act (excepting a few provisions) shall not apply to excavations made for prospecting purposes only and to small quarries;
- (iii) the maintenance of first-aid rooms in mines wherein more than one hundred and fifty persons are employed, instead of five hundred persons as at present;



- (iv) the prohibition of employment of persons in a mine when its owner, etc., fail to comply with the notice of the Inspectorate for remedying any matter, thing or practice connected with a mine, which is dangerous to human life, limb, or safety;
- (v) the empowering of the person appointed under section 24 for enquiring into an accident also to inquire into the fitness of a person to hold a certificate granted to him under the Act, if he is of the opinion that the person concerned is *prima facie* guilty of incompetence or negligence or misconduct in the performance of his duties under the Act in relation to the accident;
- (vi) the payment of overtime at a uniform rate of twice the ordinary rate of wages for persons employed both above and below ground, instead of the present

rate of one and a half times, in the case of persons employed above ground, and twice for persons employed below ground;

- (vii) the revision of the Chapter on leave with wages so as to bring it as far as practicable in line with similar provisions in the Factories Act, 1948, which are considered to be more liberal; and
- (viii) the enhancement of penalties for contravention of the different provisions of the Act to make punishment more deterrent by raising the scale of fines and also providing for imprisonment along with fine in the case of subsequent conviction for the same offence and for contravention of orders under section 55."

—S. O. R., Gaz. of Ind., 1959, Extra., Pt. II-Sec. 2, page 1135.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XLII of 1953; LXII of 1959.

—Adapted by S. A. L. O., 1956.

—Repealed in part by Act XXXVI of 1957.

#### COGNATE ACTS AND PROVISIONS

- |   |   |
|---|---|
| COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) ACT, XX OF 1957. | 5. MINERAL OILS (ADDITIONAL DUTIES OF EXCISE AND CUSTOMS) ACT, XXVII OF 1958. |
| COAL GRADING BOARD ACT, XXXI OF 1925.                             | 6. MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, LXVII OF 1957.        |
| 3. COAL MINES (CONSERVATION AND SAFETY) ACT, XII OF 1952.         | 7. MINES MATERNITY BENEFIT ACT, XIX OF 1941.                                  |
| 4. MICA MINES LABOUR WELFARE FUND ACT, XXII OF 1946.              | 8. OILFIELDS (REGULATION AND DEVELOPMENT) ACT, LIII OF 1948.                  |

#### [THE] MINES ACT, 1952

(ACT XXXV OF 1952)\*

[15th March, 1952.]

*An Act to amend and consolidate the law relating to the regulation of labour and safety in mines.*

BE it enacted by Parliament as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1949, Pt. V, p. 436.

#### CHAPTER I

##### PRELIMINARY

#### 1. Short title, extent and commencement.

(1) This Act may be called THE MINES ACT, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date\* or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States but not later than 31st December, 1953.

[a] The Act came into force on 1-7-1952, see Notfn. No. S. R. O. 967, D/- 27-5-1952 Gaz. of Ind., 1952, Pt. II-Sec. 3, p. 869.

#### 2. Definitions.

\*[ (1) ] In this Act, unless the context otherwise requires,—

(a) "adolescent" means a person who has completed his fifteenth year but has not completed his eighteenth year;

[a] Section 2 was renumbered as sub-section (1) thereof, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960].

- (b) "adult" means a person who has completed his eighteenth year ;
- \*[(c) "agent", when used in relation to a mine, means any individual, whether appointed as such or not, who acts as the representative of the owner in respect of the management, control and direction of the mine or of any part thereof, and as such superior to a manager under this Act;]
- [a] *Substituted* for original cl. (c), by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960].
- (d) "Chief Inspector" means the Chief Inspector of Mines appointed under this Act;
- (e) "child" means a person who has not completed his fifteenth year ;
- (f) "day" means a period of twenty-four hours beginning at midnight ;
- (g) "district magistrate" means, in a presidency-town, the person appointed by the Central Government to perform the duties of a district magistrate under this Act in that town;
- (h) a person is said to be "employed" in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental to, or connected with, mining operations;
- (i) "Inspector" means an Inspector of Mines appointed under this Act, and includes a district magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform;
- \*[(ii) "managing agent" has the meaning assigned to it in the Companies Act, 1956;]
- [a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960]. Sub-section (25) of S. 2 of the Companies Act, 1956, runs as follows :
- "(25) 'managing agent' means any individual, firm or body corporate entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association, and includes any individual, firm or body corporate occupying the position of a managing agent, by whatever name called."
- \*[(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes—
- (i) all borings, bore holes and oil wells;
  - (ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
  - (iii) all levels and inclined planes in the course of being driven ;
  - (iv) all open cast workings;
  - (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
  - (vi) all adits, levels, planes, machinery, works, railways, tramways and sidings, in or adjacent to and belonging to a mine;
  - (vii) all workshops situated within the precincts of a mine and under the same management and used solely for purposes connected with that mine or a number of mines under the same management;
  - (viii) all power stations for supplying electricity solely for the purpose of working the mine or a number of mines under the same management;
  - (ix) any premises for the time being used for depositing refuse from a mine, or in which any operation in connection with such refuse is being carried on, being premises exclusively occupied by the owner of the mine;

- (x) unless exempted by the Central Government by notification in the Official Gazette, any premises or part thereof, in or adjacent to and belonging to a mine, on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;
- (jj) "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicking, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum);
- (jjj) "month" means the period from the first day of any month reckoned according to the British calendar to the last day of the same month;]
- [a] *Substituted* for clause (j), by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960].
- (k) "office of the mine" means an office at the surface of the mine concerned;
- \*[(kk) "open cast working" means a quarry, that is to say, an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground;]
- [a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960].
- (l) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver [and in the case of a mine owned by a company, the business whereof is being carried on by a managing agent, such managing agent]; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;
- [a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960].
- (m) "prescribed" means prescribed by rules, regulations or bye-laws, as the case may be;
- (n) "qualified medical practitioner" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916, or in the Schedule to the Indian Medical Council Act, 1933;
- (o) "regulations", "rules" and "bye-laws" mean respectively regulations, rules and bye-laws made under this Act;

#### Section 2 (l) — Note 1

[1] Any person having some kind of proprietary or financial interest, directly or indirectly and interested in the minerals of a mine and its working is intended to be included in the term "owner." Hence a managing director of a limited concern who is certainly interested in the proceeds of the mine, its profits and losses and its working is an "owner" within the meaning of the definition in cl. (l). (57) 1957 Cri L Jour 128 (130) (Cal).

[2] A person can cease to be an owner only when he renounces his ownership. No such renunciation can be said to take place when a sole proprietor takes another person into

partnership and entrusts to him the conduct of the mine in accordance with the partnership agreement because in spite of the partnership he continues to be entitled to enjoy the advantages of ownership and exercise the powers of proprietorship. Hence he does not cease to be an owner. 1959 Cal 208 (212) [AIR V 46 C 54].

#### Section 2 (o) — Note 1

[1] The rules, regulations and bye laws made under the Act of 1923 have become "rules, regulations and bye laws" made under this Act within the meaning of the definition in S. 2 (o) by virtue of the provisions of S. 24 of General Clauses Act. The fact that this

(p) where work of the same kind is carried out by two or more sets of persons working during different periods of the day each of such sets is called a "relay" \* [and each of such periods is called a "shift"];

[a] Added by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960].

(q) "serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days;

(r) "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night,

\*[(2) A person working or employed in or in connection with a mine is said to be working or employed—

(a) "below ground" if he is working or employed—

(i) in a shaft which has been or is in the course of being sunk; or

(ii) in any excavation which extends below superjacent ground; and

(b) "above ground" if he is working in an open cast working or in any other manner not specified in clause (a).]

[a] Inserted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 2 [w. e. f. 16-1-1960].

### \*[3. Act not to apply in certain cases.

(1) The provisions of this Act, except those contained in sections 7, 8, 9, 44, 45 and 46, shall not apply to—

(a) any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale:

Provided that—

(i) not more than twenty persons are employed on any one day in connection with any such excavation;

(ii) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres or, in the case of an excavation for coal, fifteen metres; and

(iii) no part of such excavation extends below superjacent ground; or

(b) any mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, road metal, earth, fullers earth and lime stone:

Provided that—

(i) the workings do not extend below superjacent ground; or

(ii) where it is an open cast working—

(a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres;

(b) the number of persons employed on any one day does not exceed fifty; and

(c) explosives are not used in connection with the excavation.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that, having regard to the circumstances obtaining in relation to a mine or part thereof or group or class of mines, it is

#### Section 2 (a) — Note 1 (contd.)

Act itself has not provided for such a result is immaterial. 1958 Madh Pra 162 (166) [A I R V 45 C 57]; 1958 Cri L Jour 767 \* 1957 Cal 483 (492) [(S) A I R V 44 C 132] : 1957 Cri L

Jour 834 (DB).

[But see 1958 Andh 24 (25, 26) [A I R V 43 C 7] : ILR (1955) Andh 497 : 1958 Cri L Jour 29.]

necessary or desirable so to do, by notification in the Official Gazette, declare that any of the provisions of this Act, not set out in sub-section (1), shall apply to any such mine or part thereof or group or class of mines or any class of persons employed therein.

(3) Without prejudice to the provisions contained in sub-section (2), if at any time any of the conditions specified in the proviso to clause (a) or clause (b) of sub-section (1) is not fulfilled in relation to any mine referred to in that sub-section, the provisions of this Act not set out in sub-section (1), shall become immediately applicable, and it shall be the duty of the owner, agent or manager of the mine to inform the prescribed authority in the prescribed manner and within the prescribed time about the non-fulfilment.]

[a] Substituted for the former section 3, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 3 [w. e. f. 16-1-1960].

#### 4. References to time of day.

In this Act, references to time of day are references to Indian standard time, being five and a half hours ahead of Greenwich mean time :

Provided that, for any area in which Indian standard time is not ordinarily observed, the Central Government may make rules—

- (a) specifying the area ;
- (b) defining the local mean time ordinarily observed therein; and
- (c) permitting such time to be observed in all or any of the mines situated in the area.

### CHAPTER II

#### INSPECTORS AND CERTIFYING SURGEONS

#### 5. Chief Inspector and Inspectors.

(1) The Central Government may, by notification in the Official Gazette, appoint such a person as possesses the prescribed qualifications to be Chief Inspector of Mines for all the territories to which this Act extends and such persons as possess the prescribed qualifications to be Inspectors of Mines subordinate to the Chief Inspector.

(2) No person shall be appointed to be Chief Inspector or an Inspector, or having been appointed shall continue to hold such office, who is or becomes directly or indirectly interested in any mine or mining rights in India.

(3) The district magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government :

Provided that nothing in this sub-section shall be deemed to empower a district magistrate to exercise any of the powers conferred by section 22 or section 61.

(4) The Chief Inspector and all Inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code.

[a] See Notifn. No. S. R. O., 1789 D/- 18-9-1953, published in Gaz. of Ind., 1953, Pt. II, Sec. 3, p. 1530.

#### \*[6. Functions of Inspectors.

(1) The Chief Inspector may, with the approval of the Central Government and subject to such restrictions or conditions as he may think fit to impose, by order in writing, authorise any Inspector named or any class of Inspectors specified in the order to exercise such of the powers of the Chief Inspector under this Act (other than those relating to appeals) as he may specify.

(2) The Chief Inspector may, by order in writing, prohibit or restrict the exercise by any Inspector named or any class of Inspectors specified in the order of any power conferred on Inspectors under this Act.

(3) Subject to the other provisions contained in this section, the Chief Inspector shall declare the local area or areas within which or the group or class

of mines with respect to which Inspectors shall exercise their respective powers.]

[a] *Substituted for S. 6, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 4*  
[w. e. f. 16-1-1960].

## **7. Powers of Inspectors of Mines.**

(1) The Chief Inspector and any Inspector may—

- (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder are observed in the case of any mine;
- (b) with such assistants, if any, as he thinks fit, enter, inspect and examine any mine or any part thereof at any time by day or night:

Provided that the power conferred by this clause shall not be exercised in such a manner as unreasonably to impede or obstruct the working of the mine;

- (c) examine into, and make inquiry respecting, the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine, and all matters and things connected with or relating to the health, safety and welfare of the persons employed in the mine, and take whether on the precincts of the mine or elsewhere, statements of any person which he may consider necessary for carrying out the purposes of this Act;
- (d) exercise such other powers as may be prescribed by regulations made by the Central Government in this behalf:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(2) The Chief Inspector and any Inspector may, if he has reason to believe, as a result of any inspection, examination or inquiry under this section, that an offence under this Act has been or is being committed, search any place and take possession "[of any material or any plan, section, register or other record] appertaining to the mine, and the provisions of the Code of Criminal Procedure, 1898, shall, so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of that Code.

[a] *Substituted for "of any register or other record", by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 5 [w. e. f. 16-1-1960].*

## **8. Powers of special officer to enter, measure, etc.**

Any person in the service of the Government duly authorised in this behalf by a special order in writing of the Chief Inspector or of an Inspector may, for the purpose of surveying, levelling or measuring any mine, after giving not less than three days' notice to the manager of such mine, enter the mine and may survey, level or measure the mine or any part thereof at any time by day or night:

Provided that, where in the opinion of the Chief Inspector or of an Inspector an emergency exists, he may, by order in writing, authorise any such person to enter the mine for any of the aforesaid purposes without giving any such notice.

## **9. Facilities to be afforded to Inspectors.**

Every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 8 all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under this Act.

## **10. Secrecy of information obtained.**

(1) All copies of, and extracts from, registers or other records appertaining to any mine and all other information acquired by the Chief Inspector or an

Inspector or by any one assisting him, in the course of the inspection of any mine under this Act or acquired by any person authorised under section 8 in the exercise of his duties thereunder, shall be regarded as confidential and shall not be disclosed to any person or authority unless the Chief Inspector or the Inspector considers disclosure necessary to ensure the health, safety or welfare of any person employed in the mine or in any other mine adjacent thereto.

(2) Nothing in sub-section (1) shall apply to the disclosure of any such information (if so required) to—

- (a) any Court;
- (b) a Mining Board, Committee, or Court of inquiry constituted or appointed under section 12, section 13 or section 24 as the case may be;
- (c) an official superior or the owner, agent or manager of the mine concerned;
- (d) a Commissioner for workmen's compensation appointed under the Workmen's Compensation Act, 1923;
- (e) the Director, Indian Bureau of Mines.

(3) If the Chief Inspector, or an Inspector or any other person referred to in sub-section (1) discloses, contrary to the provisions of this section, any such information as aforesaid without the consent of the Central Government, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) No Court shall proceed to the trial of any offence under this section except with the previous sanction of the Central Government.

### **11. Certifying surgeons.**

(1) The Central Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such mine or class or description of mines as it may assign to them respectively.

(2) Subject to such conditions as the Central Government may think fit to impose, a certifying surgeon may, with the approval of the Central Government, authorise any qualified medical practitioner to exercise all or any of his powers under this Act for such period as the certifying surgeon may specify, and references to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

(3) No person shall be appointed to be, or authorised to exercise the powers of, a certifying surgeon, or, having been so appointed or authorised, continue to exercise such powers, who is or becomes the owner, agent or manager of a mine, or is or becomes directly or indirectly interested therein, or in any process or business carried on therein or in any patent or machinery connected therewith, or is otherwise in the employment of the mine.

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with—

- (a) the examination and certification of adolescents under this Act;
- (b) the examination of persons engaged in a mine in such dangerous occupations or processes as may be prescribed;
- (c) the exercise of such medical supervision as may be prescribed for any mine or class or description of mines where—
  - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of any process carried on or other conditions of work prevailing in the mine;
  - (ii) adolescents are or are to be employed in any work which is likely to cause injury to their health.

## CHAPTER III

### MINING BOARDS AND COMMITTEES

#### 12. Mining Boards.

(1) The Central Government may constitute for any part of the territories to which this Act extends, or for any group or class of mines, a Mining Board consisting of—

- (a) a person in the service of the Government, not being the Chief Inspector or an Inspector, <sup>a</sup>[appointed] by the Central Government to act as chairman;
- (b) the Chief Inspector or an Inspector <sup>a</sup>[appointed] by the Central Government;
- (c) a person, not being the Chief Inspector or an Inspector, <sup>a</sup>[appointed] by the Central Government;
- (d) two persons nominated by owners of mines or their representatives in such manner as may be prescribed;
- (e) two persons to represent the interest of miners, who shall be nominated in accordance with the following provisions, namely,—
  - (i) if there are one or more registered trade unions having in the aggregate as members not less than one-quarter of the miners, the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed;
  - (ii) if sub-clause (i) is not applicable and there are one or more registered trade unions having in the aggregate as members not less than one thousand miners, one of the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed and the other by the Central Government;
  - (iii) if neither sub-clause (i) nor sub-clause (ii) is applicable, the said persons shall be nominated by the Central Government.

*Explanation.*—In this clause “miner” means a person employed, otherwise than in a position of supervision or management, in any of the mines for which the Mining Board is constituted.

(2) The chairman shall appoint a person to act as secretary to the Board.

(3) The Central Government may give directions as to the payment of travelling expenses incurred by the secretary or any member of any such Mining Board in the performance of his duty as such secretary or member.

[a] Substituted for “nominated” by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 6. [w. e. f. 16-1-1960].

#### 13. Committees.

(1) Where under this Act any question relating to a mine is referred to a Committee, the Committee shall consist of—

- (a) a chairman nominated by the Central Government or by such officer or authority as the Central Government may authorise in this behalf;
- (b) a person nominated by the chairman and qualified by experience to dispose of the question referred to the Committee; and
- (c) two persons to represent the interests of the persons employed in the mine of whom one shall be nominated by the owner, agent or manager of the mine concerned, and the other shall be nominated by the Central Government in consultation with such organisations of miners employed in the mine as may be recognised for the purpose by that Government.

(2) No Inspector or person employed in or in the management of any mine concerned shall serve as chairman or member of a Committee appointed under this section.

(3) Where an owner, agent or manager fails to exercise his power of nomi-



nation under clause (c) of sub-section (1), the Committee may, notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it.

(4) The Committee shall hear and record such information as the Chief Inspector or the Inspector, or the owner, agent or manager of the mine concerned, may place before it, and shall intimate its decision to the Chief Inspector or the inspector and to the owner, agent or manager of the mine, and shall report its decision to the Central Government.

(5) On receiving such report the Central Government shall pass orders in conformity therewith unless the Chief Inspector or the owner, agent or manager of the mine has lodged an objection to the decision of the Committee, in which case the Central Government may proceed to review such decision and to pass such orders in the matter as it may think fit:

Provided that if an objection is lodged by the Chief Inspector, notice of the same shall be given to the owner, agent or manager of the mine before any orders are passed thereon by the Central Government.

(6) The Central Government may give directions as to the remuneration, if any, to be paid to the members of the Committee or any of them, and as to the payment of expenses of the inquiry including such remuneration.

#### **14. Powers of Mining Boards.**

(1) Any Mining Board constituted under section 12 and any Committee constituted under section 13 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to it.

(2) Every Mining Board constituted under section 12 and every Committee appointed under section 13 shall have the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects.

\*[ \* \* ].

[a] The words and figures "and every person required by any such Mining Board or Committee to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 178 of the Indian Penal Code," were omitted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 7 [w. e. f. 18-1-1960].

#### **15. Recovery of expenses.**

The Central Government may direct that the expenses of any inquiry conducted by a mining Board constituted under section 12 or by a Committee appointed under section 13 shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector to a magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any movable property within the limits of the magistrate's jurisdiction belonging to such owner or agent:

Provided that the owner or his agent has not paid the amount within six weeks from the date of receiving the notice from the Central Government or the Chief Inspector of mines.

### **CHAPTER IV**

#### **MINING OPERATIONS AND MANAGEMENT OF MINES**

#### **16. Notice to be given of mining operations.**

(1) The owner, agent, or manager of a mine shall, before the commencement of any mining operation, give to the Chief Inspector, the Director, Indian Bureau of Mines and the district magistrate of the district in which the mine is situate, notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

(2) Any notice given under sub-section (1) shall be so given as to reach the

persons concerned at least one month before the commencement of any mining operation.

### 17. Managers.

Save as may be otherwise prescribed every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management <sup>a</sup>[supervision] and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications, to be such manager.

[a] *Inserted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 8 [w.e.f. 16-1-1960].*

### 18. Duties and responsibilities of owners, agents and managers.

(1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder.

(2) In the event of any contravention of any such provisions by any person whosoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention :

<sup>a</sup>[<sup>e</sup> \* \* \*].

(3) <sup>b</sup>[<sup>e</sup> \* \* \*]. It shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act.

[a] The Proviso was *omitted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 9 [w.e.f. 16-1-1960]. [b] The words "Save as hereinbefore provided" were *omitted, ibid.*

## CHAPTER V

### PROVISIONS AS TO HEALTH AND SAFETY

### 19. Drinking water.

<sup>a</sup>[(1) In every mine effective arrangements shall be made to provide and maintain at suitable points conveniently situated a sufficient supply of cool and wholesome drinking water for all persons employed therein :

Provided that in the case of persons employed below ground the Chief Inspector may, in lieu of drinking water being provided and maintained at suitable points, permit any other effective arrangements to be made for such supply.]

(2) All such points shall be legibly marked 'DRINKING WATER' in a language understood by a majority of the persons employed in the mine and no such point shall be situated within twenty feet of any washing place, urinal or latrine, unless a shorter distance is approved in writing by the Chief Inspector.

(3) In respect of all mines or any class or description of mines, the Central Government may make rules for securing compliance with the provisions of sub-sections (1) and (2) and for the examination by prescribed authorities of the supply and distribution of drinking water.

[a] *Substituted* for sub-section (1), by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 10 [w.e.f. 16-1-1960].

#### Section 18 — Note 1

[1] Although a rule made under the Act casts a duty only on the owner, the agent and manager would also become constructively liable for a contravention of the rule by the owner because of the provisions of sub-s. (2) of the section. He can avoid the liability only by showing that he has taken all reasonable means by publishing and enforcing the provisions which have been contravened by others

to the best of his ability and that in spite of it they had been contravened. 1957 Cal 483 (490) [(S) A I R V 44 C 132] : 1957 Cri L Jour 834 (DB). (The words "any person whosoever" in sub-s. (2) cannot be taken to exclude the owner, the agent and the manager and hence even if the contravention is by any one of them and not by a third party the others would become constructively liable.)

**20. Conservancy.**

(1) There shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the mine at all times.

(2) All latrines and urinals provided under sub-section (1) shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition.

(3) The Central Government may specify the number of latrines and urinals to be provided in any mine, in proportion to the number of males and females employed in the mine and provide for such other matters in respect of sanitation in mines (including the obligations in this regard of persons employed in the mine) as it may consider necessary in the interests of the health of the persons so employed.

**\*[ 21. Medical appliances.**

(1) In every mine there shall be provided and maintained so as to be readily accessible during all working hours such number of first-aid boxes or cupboards equipped with such contents as may be prescribed.

(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard or room.

(3) Every first-aid box or cupboard shall be kept in the charge of a responsible person who is trained in such first-aid treatment as may be prescribed and who shall always be readily available during the working hours of the mine.

(4) In every mine there shall be made so as to be readily available such arrangements as may be prescribed for the conveyance to hospitals or dispensaries of persons who, while employed in the mine, suffer bodily injury or become ill.

(5) In every mine wherein more than one hundred and fifty persons are employed, there shall be provided and maintained a first-aid room of such size with such equipment and in the charge of such medical and nursing staff as may be prescribed.]

[a] Substituted for the original section 21 by the Mines (Amendment) Act, 1959 (LXII of 1959), s. 11 [w. e. f. 16-1-1960].

**OBJECTS AND REASONS**

*Substituted section 21*—"The scale prescribed for first aid boxes in sub-section (1) of (old) section 21 is considered inadequate. The number of first aid boxes to be provided will depend upon various factors and it will be more appropriate to prescribe details in this regard in the rules framed under the Act."

"Unlike work in factories, work in mines—particularly work below ground—is more

hazardous. It is, therefore, necessary that arrangements should be available for transport of injured persons to hospitals or dispensaries and that first aid rooms should be provided in mines wherein more than one hundred and fifty persons, instead of five hundred as at present, are employed."

—S. O. R.

**\*[22. Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous.**

(1) If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Chief Inspector or an Inspector that any mine or part thereof or any matter, thing or practice in or connected with the mine, or with the control, supervision, management or direction thereof, is dangerous to human life or safety or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice in writing, thereof to the owner, agent or manager of the mine and shall state in the notice the particulars in respect of which he considers the mine or part thereof or the matter, thing or practice to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice.

(1A) Where the owner, agent or manager of a mine fails to comply with the terms of a notice given under sub-section (1) within the period specified there-

in, the Chief Inspector or the Inspector, as the case may be, may, by order in writing, prohibit the employment in or about the mine or any part thereof of any person whose employment is not in his opinion reasonably necessary for securing compliance with the terms of the notice.

(2) Without prejudice to the provisions contained in sub-section (1), the Chief Inspector or the Inspector, as the case may be, may, by order in writing addressed to the owner, agent or manager of a mine, prohibit the extraction or reduction of pillars or blocks of minerals in any mine or part thereof, if, in his opinion, such operation is likely to cause the crushing of pillars or blocks of minerals or the premature collapse of any part of the workings or otherwise endanger the mine or the life or safety of persons employed therein or if, in his opinion, adequate provision against the outbreak of fire or flooding has not been made by providing for the sealing off and isolation of the part of the mine in which such operation is contemplated and for restricting the area that might be affected by fire or flooding.

(3) If the Chief Inspector, or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector, is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or any part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(4) Where a notice has been given under sub-section (1) or an order made under sub-section (1A), sub-section (2) or sub-section (3) by an Inspector, the owner, agent or manager of the mine may, within ten days after the receipt of the notice or order, as the case may be, appeal against the same to the Chief Inspector who may confirm, modify or cancel the notice or order.

(5) The Chief Inspector or the Inspector sending a notice under sub-section (1) or making an order under sub-section (1A), sub-section (2) or sub-section (3) and the Chief Inspector making an order (other than an order of cancellation in appeal) under sub-section (4) shall forthwith report the same to the Central Government.

(6) If the owner, agent or manager of the mine objects to a notice sent under sub-section (1) by the Chief Inspector or to an order made by the Chief Inspector under sub-section (1A) or sub-section (2) or sub-section (3) or sub-section (4), he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision on appeal, as the case may be, send his objection in writing stating the grounds thereof to the Central Government which shall refer the same to a Committee.

(7) Every notice under sub-section (1), or order under sub-section (1A), sub-section (2), sub-section (3) or sub-section (4), to which objection is made under sub-section (6), shall be complied with, pending the receipt at the mine of the decision of the Committee:

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a requisition under sub-section (1), pending its decision on the objection.

(\*) Nothing in this section shall affect the powers of a magistrate under section 144 of the Code of Criminal Procedure, 1898.]

[a] Substituted for the original S. 22 by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 11 [w. e. f. 16-1-1960].

#### OBJECTS AND REASONS

*Substitution of section 22.* — "There is no provision at present for taking action against an owner, etc., of a mine for failure to comply with a notice under sub-section (1). The proposed sub-section (1A) is necessary to remove this lacuna. Apart from the consequential amendments made in the subsequent sub-sections, provision has also been made to cover mines where "blocks of minerals" are formed as is the practice in

mines other than coal mines and where extraction or reduction of pillars or blocks of minerals is attended with undue risk to the persons employed in such operations or where there is danger to the mine due to inundation

or irruption of water from surface or a neighbouring mine. The whole of section 22 has been recast to include the above amendments."

—S. O. R.

## 23. Notice to be given of accidents.

<sup>a</sup>[(1) Whenever there occurs in or about a mine—

- (a) an accident causing loss of life or serious bodily injury, or
- (b) an explosion, ignition, spontaneous heating, outbreak of fire or irruption or inrush of water or other liquid matter, or
- (c) an influx of inflammable or noxious gases, or
- (d) a breakage of ropes, chains or other gear by which persons or materials are lowered or raised in a shaft or an incline, or
- (e) an overwinding of cages or other means of conveyance in any shaft while persons or materials are being lowered or raised, or
- (f) a premature collapse of any part of the workings, or
- (g) any other accident which may be prescribed,

the owner, agent or manager of the mine shall give notice of the occurrence to such authority in such form and within such time as may be prescribed, and he shall simultaneously post one copy of the notice on a special notice board in the prescribed manner at a place where it may be inspected by trade union officials, and shall ensure that the notice is kept on the board for not less than fourteen days from the date of such posting.]

(2) Where a notice given under sub-section (1) relates to an accident causing loss of life, the authority shall make an inquiry into the occurrence within two months of the receipt of the notice and, if the authority is not the Inspector, he shall cause the Inspector to make an inquiry within the said period.

(3) The Central Government may, by notification in the Official Gazette, direct that accidents other than those specified in sub-section (1), which cause bodily injury resulting in the enforced absence from work of the person injured for a period exceeding forty-eight hours shall be entered in a register in the prescribed form or shall be subject to the provisions of sub-section (1).

(4) A copy of the entries in the register referred to in sub-section (3) shall be sent by the owner, agent, or manager of the mine, <sup>b</sup>[on or before the 20th day of January in the year following that to which the entries relate] to the Chief Inspector.

[a] *Substituted* for sub-section (1), by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 12 [w. e. f. 18.1.1960]. [b] *Substituted* for "within fourteen days after the 30th day of June and the 31st day of December in each year", *ibid.*

### OBJECTS AND REASONS

"Sub-section (1) of section 23 has been recast to require submission of notices in certain other cases of accidents also and to reduce the period for which notice of accident is to be posted on the notice board at the mine from two months to fourteen days."

—S. O. R.

## 24. Power of Government to appoint Court of inquiry in cases of accidents.

<sup>a</sup>[(1) When any accident of the nature referred to in any of the clauses of sub-section (1) of section 23 occurs in or about a mine, the Central Government

### Section 23 — Note 1

[1] Sub-section (2) of this section does not provide any starting for the period of limitation prescribed under S. 79. Section 79 is a wholly independent provision which is in no way controlled by sub-s. (2). 1958 Bom 243 (244) [AIR V 45 C 70] : ILR (1959) Bom 358 : 1958 Cri L Jour 756.

[2] Sub-section (2) requires only the com-

mencement of the enquiry within the period of two months from the date on which the notice under sub-s. (1) has been received. It does not prescribe any period within which such an enquiry should be completed. 1958 Bom 243 (244) [AIR V 45 C 70] : I L R (1959) Bom 358 : 1958 Cri L Jour 756.

may, if it is of opinion that a formal inquiry into the causes of and circumstances attending the accident ought to be held, appoint a competent person to hold such inquiry and may also appoint one or more persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.]

(2) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material object ; b[\* \* \*].

(3) Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(4) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

[a] Substituted for sub-section (1), by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 13 [w. e. f. 16-1-1960]. [b] The words and figures "and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code" were omitted, *ibid.*

## 25. Notice of certain diseases.

(1) Where any person employed in a mine contracts any disease<sup>a</sup> notified by the Central Government in the Official Gazette as a disease connected with mining operations, the owner, agent or manager of the mine, as the case may be, shall send notice thereof to the Chief Inspector and to such other authorities, in such form and within such time as may be prescribed.

(2) If any medical practitioner attends on a person who is or has been employed in a mine and who is or is believed by the medical practitioner to be suffering from any disease notified under sub-section (1), the medical practitioner shall without delay send a report in writing to the Chief Inspector stating—

- (a) the name and address of the patient,
- (b) the disease from which the patient is or is believed to be suffering, and
- (c) the name and address of the mine in which the patient is or was last employed.

(3) Where the report under sub-section (2) is confirmed to the satisfaction of the Chief Inspector by the certificate of a certifying surgeon or otherwise that the person is suffering from a disease notified under sub-section (1), the Chief Inspector shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the owner, agent or manager of the mine in which the person contracted the disease.

(4) If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to fifty rupees.

[a] Silicosis and Pneumoconiosis were declared as such diseases, see Notification S. R. O. 1306, dated the 21st July 1952, published in Gaz. of Ind., 1952, Pt. II-S. 3, p. 1153.

## 26. Power to direct investigation of causes of disease.

(1) The Central Government may, if it considers it expedient to do so, appoint a competent person to inquire into and report to it on any case where a disease notified under sub-section (1) of section 25 has been or is suspected to have been contracted in a mine, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) The provisions of sub-sections (2) and (3) of section 24 shall apply to an inquiry under this section in the same manner as they apply to any inquiry under that section.

**27. Publication of reports.**

The Central Government may cause any report submitted by a Committee under section 13 or any report or extracts from any report submitted to it under section 26, and shall cause every report submitted by a Court of inquiry under section 24 to be published at such time and in such manner as it may think fit.

**CHAPTER VI****HOURS AND LIMITATION OF EMPLOYMENT****28. Weekly day of rest.**

No person shall be allowed to work in a mine on more than six days in any one week.

**29. Compensatory days of rest.**

(1) Where in pursuance of action under section 38 or as a result of exempting any mine or the persons employed therein from the provisions of section 28, any person employed therein is deprived of any of the weekly days of rest for which provision is made in section 28, he shall be allowed, within the month in which such days of rest were due to him or within the two months immediately following that month, compensatory days of rest equal in number to the days of rest of which he has been deprived.

(2) The Central Government may prescribe the manner in which the days of rest for which provision is made in sub-section (1) shall be allowed.

**30. Hours of work above ground.**

(1) No adult employed above ground in a mine shall be required or allowed to work for more than forty-eight hours in any week or for more than nine hours in any day :

\*[Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this sub-section may be exceeded in order to facilitate the change of shifts.]

(2) The periods of work of any such adult shall be so arranged that, along with his interval for rest, they shall not in any day spread over more than twelve hours, and that he shall not work for more than five hours continuously before he has had an interval for rest of at least half an hour :

\*[Provided that the Chief Inspector may, for reasons to be recorded in writing and subject to such conditions as he may deem fit to impose, permit the spread-over to extend over a period not exceeding fourteen hours in any day.]

†[(3) Persons belonging to two or more shifts shall not be allowed to do work of the same kind above ground at the same time :

Provided that, for the purposes of this sub-section persons shall not be deemed to belong to separate shifts by reason only of the fact that they receive their intervals for rest at different times.]

[a] Added by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 14 [w.e.f. 18-1-1960].

[b] Substituted for the original proviso to sub-sec. (2), *ibid.* [c] Substituted for sub-section (3), *ibid.*

**\*[31. Hours of work below ground.**

(1) No adult employed below ground in a mine shall be allowed to work for more than forty-eight hours in any week or for more than eight hours in any day :

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this sub-section may be exceeded in order to facilitate the change of shifts.

(2) No work shall be carried on below ground in any mine except by a system of shifts so arranged that the period of work for each shift is not spread over more than the daily maximum hours stipulated in sub-section (1).



(3) No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register maintained under sub-section (4) of section 48.]

[a] *Substituted* for the original S. 31, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 15 [w.e.f. 16-1-1960].

### \*[32. Night shift.

Where a person employed in a mine works on a shift which extends beyond midnight—

(a) for the purposes of sections 28 and 29, a weekly day of rest shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends ;

(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.]

[a] *Substituted* for the original S. 32, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 16 [w.e.f. 16-1-1960].

### 33. Extra wages for overtime.

<sup>a</sup>[(1) Where in a mine a person works above ground for more than nine hours in any day, or works below ground for more than eight hours in any day or works for more than forty-eight hours in any week whether above ground or below ground, he shall in respect of such overtime work be entitled to wages at the rate of twice his ordinary rate of wages, the period of overtime work being calculated on a daily basis, or weekly basis, whichever is more favourable to him.]

(2) Where any person employed in a mine is paid on piece-rate basis, the Central Government shall, in consultation with the employer concerned and the representatives of the persons employed in the mine, fix for the purposes of this section time rates which shall, as nearly as possible be equivalent to the average rate of earnings of the persons so employed, and the rates so fixed shall be deemed to be the ordinary rates of wages of such persons.

(3) For the purposes of this section "ordinary rate of wages" means the basic wages *plus* <sup>b</sup>[any dearness allowance and compensation in cash including such compensation, if any, accruing through the free issue of foodgrains] and other articles as persons employed in a mine may, for the time being, be entitled to, but does not include a bonus.

(4) The Central Government may prescribe the registers to be maintained in a mine for the purpose of securing compliance with the provisions of this section.

[a] *Substituted* for sub-section (1), by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 17 [w. e. f. 16-1-1960]. [b] *Substituted* for "such allowances including the cash equivalent of the advantage accruing through the sale on a concessional basis of foodgrains", *ibid.*

### OBJECTS AND REASONS

*Sub-section (1)*— "This clause removes the distinction in the matter of payment of overtime wages between workers employed below ground and those employed in other parts of the mine. A reference to the daily maximum hours of work in excess of which overtime is admissible has also been included."

*Sub-section (3)*—"In coal mines certain cash concessions are given on the basis of attendance and it is necessary to take into account

such compensation in cash for the purpose of computation of "ordinary rate of wages". As it is difficult to reckon the cash equivalent of foodgrains issued on a concessional basis (which varies from person to person, depending upon the size of his family), it is considered desirable to take into account only the cash equivalent of the advantage accruing through the sale of foodgrains which is identical for all persons." — S. O. R.

### \*[34. Prohibition of employment of certain persons.

No person shall be required or allowed to work in a mine if he has already been working in any other mine within the preceding twelve hours.]

[a] *Substituted* for the original S. 34, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 18 [w. e. f. 16-1-1960].



**\*[35. Limitation of daily hours of work including overtime work.**

Save in respect of cases falling within clause (a) and clause (e) of section 39, no person employed in a mine shall be required or allowed to work in the mine for more than ten hours in any day inclusive of overtime.]

[a] *Substituted* for the original section 35 by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 19 [w. e. f. 16-1-1960].

**36. Notices regarding hours of work.**

(1) The manager of every mine shall cause to be posted outside the office of the mine a notice in the prescribed form stating the time of the commencement and of the end of work at the mine and, if it is proposed to work by a system of relays, the time of the commencement and of the end of work for each relay.

(2) In the case of a mine at which mining operations commence after the commencement of this Act, the notice referred to in sub-section (1) shall be posted not less than seven days before the commencement of work.

(3) The notice referred to in sub-section (1) shall also state the time of the commencement and of the intervals for rest for persons employed above ground and a copy thereof shall be sent to the Chief Inspector, if he so requires.

(4) Where it is proposed to make any alteration in the time fixed for the commencement or for the end of work in the mine generally or for any relay or in the rest intervals fixed for persons employed above ground, an amended notice in the prescribed form shall be posted outside the office of the mine not less than seven days before the change is made, and a copy of such notice shall be sent to the Chief Inspector not less than seven days before such change.

(5) No person shall be allowed to work in a mine otherwise than in accordance with the notice required by sub-section (1).

**37. Supervising staff.**

Nothing in section 28, section 30, section 31, section 34 or <sup>a</sup>[sub-section (5) of section 36], shall apply to persons who may by rules be defined to be persons, holding positions of supervision or management or employed in a confidential capacity.

[a] *Substituted* for "sub-section (4) of section 36" by the Repealing and Amending Act, 1953 (XLII of 1953), S. 4 and Sch. III [23-12-1953].

**38. Exemption from provisions regarding employment.**

(1) In case of an emergency involving serious risk to the safety of the mine or of persons employed therein, or in case of an accident, whether actual or apprehended, or in case of any act of God or in case of any urgent work to be done to machinery, plant or equipment of the mine as the result of breakdown of such machinery, plant or equipment, the manager may, subject to the provisions of section 22 and in accordance with the rules under section 39, permit persons to be employed in contravention of section 28, section 30, section 31, section 34, or <sup>a</sup>[sub-section (5) of section 36], on such work as may be necessary to protect the safety of the mine or of the persons employed therein :

Provided that, in case of any urgent work to be done to machinery, plant or equipment under this section, the manager may take the action permitted by this section, although the production of <sup>b</sup>[mineral] would thereby be incidentally affected, but any action so taken shall not exceed the limits necessary for the purpose of avoiding serious interference with the ordinary working of the mine.

(2) Every case in which action has been taken by the manager under sub-section (1), shall be recorded together with the circumstances relating thereto and a report thereof shall also be made to the Chief Inspector or the Inspector.

[a] *Substituted*, for "sub-section (4) of section 36" by the Repealing and Amending Act, 1953 (XLII of 1953), S. 4 & Sch. III [23-12-1953]. [b] *Substituted* for "coal" by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 20 [w. e. f. 16-1-1960].

**19. Power to make exempting rules.**

Save in respect of adolescents, the Central Government may make rules providing for the exemption to such extent, in such circumstances and subject to such conditions as may be specified, from the provisions of sections 28, 30, 31, 34 or sub-section (5) of section 36—

- (a) of all or any of the persons employed in a mine, where an emergency involving serious risk to the safety of the mine or of the persons employed therein is apprehended ;
- (b) of all or any of the persons so employed, in case of an accident, actual or apprehended ;
- (c) of all or any of the persons engaged in work of a preparatory or complementary nature, which must necessarily be carried on for the purpose of avoiding serious interference with the ordinary working of the mine ;
- (d) of all or any of the persons engaged in urgent repairs ; and
- (e) of all or any of the persons employed in any work which for technical reasons must be carried on continuously.]

[a] *Substituted* for S. 39 by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 21 [w. e. f. 16-1-1960].

**OBJECTS AND REASONS**

The substituted section 39 "seeks to exclude adolescents from the scope of section 39 and to bring within its purview persons engaged in work of a preparatory or comple-

mentary nature which must necessarily be carried on for the purpose of avoiding serious interference with the ordinary working of the mine."—S. O. R.

**40. Employment of adolescents.**

(1) No adolescent shall be allowed to work in any part of a mine which is below ground unless—

<sup>a</sup>[(a) he has completed his sixteenth year ;]

<sup>b</sup>[(aa)] a medical certificate in the prescribed form granted to the adolescent by a certifying surgeon certifying that he is fit for work as an adult is in the custody of the manager of the mine ;

(b) the adolescent carries while at work, a token giving a reference to such certificate ;

(c) the adolescent has an interval for rest of at least half an hour after every four and a half hours of continuous work on any day.

(2) Notwithstanding anything contained in this Act, no adolescent who has been granted a certificate under sub-section (1) shall be employed in any mine except between the hours of 6 A.M. and 6 P.M. :

Provided that the Central Government may, by notification in the Official Gazette, vary the hours of employment of such adolescent in respect of any mine or class of mines so however that no employment of any such adolescent between the hours of 10 P.M. and 5 A.M. is permitted thereby.

[a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 22 [w. e. f. 16-1-1960]. [b] Re-lettered for clause "(a)", *ibid.*

**41. Certificate of fitness.**

(1) A certificate of fitness granted or renewed for the purposes of section 40—

(a) shall be valid only for a period of twelve months from the date thereof ;

(b) may be subject to specified conditions in regard to employment generally or the nature of the work in which the adolescent may be employed.

(2) A certifying surgeon shall revoke a certificate granted or renewed under section 40, if in his opinion the holder of it is no longer fit for work in the capacity stated therein in a mine.

(3) Where a certifying surgeon refuses to grant or renew a certificate or revokes a certificate, he shall, if so required by the person concerned, state his reasons in writing for so doing.

(4) Where a certificate under section 40 with reference to any adolescent is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (1), an adolescent shall not be required or allowed to work in any mine except in accordance with those conditions.

(5) The adolescent or his parents shall not be liable to pay any part of the expenses of any medical examination under section 40 in all cases where the application for a medical certificate is accompanied by a document signed by the manager of a mine stating that the adolescent to be examined will be employed in the mine if certified to be fit for work therein or the application is made by the manager of the mine in which the adolescent desires to be employed.

#### **42. Effect of certificate of fitness granted to adolescents.**

An adolescent, who has been granted a certificate of fitness to work in a mine as an adult under section 40, and who while actually employed in a mine carries a to en giving a reference to such certificate, shall '[subject to the conditions referred to in that section,] be deemed to be an adult for the purposes of this Act.

[a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 23 [w. e. f. 16-1-1960].

#### **\*[43. Power to require medical examination**

(1) Where an Inspector is of opinion that any person employed in a mine is a child or is an adolescent without a certificate of fitness or is an adolescent with a certificate of fitness but no longer fit to work in the capacity stated in the certificate, he may serve on the manager of the mine a notice requiring that such person shall be examined by a certifying surgeon and such person shall not, if the Inspector so directs, be employed or permitted to work in any mine until he has been so examined and has been certified that he is an adult or, if an adolescent, he has been granted a certificate of fitness, or, as the case may be, a fresh certificate of fitness under section 40.

(2) Every certificate as to the age of a person which has been granted in the prescribed manner and any certificate granted by a certifying surgeon on a reference under sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.]

[a] *Substituted* for S. 43, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 24 [w. e. f. 16-1-1960].

#### **\*[44. Working hours for adolescents not certified to be fit for work as adults.**

(1) No adolescent who has not been granted a medical certificate certifying that he is fit for work as an adult shall be employed or permitted to be employed above ground in a mine —

(a) for more than four-and-a-half hours in any day, and

(b) between the hours of 6 p. m. and 6 a. m.

(2) The period of work of all such adolescents employed in a mine shall be limited to two shifts which shall not spread over more than five hours each, and there shall be no change of shifts except once in a period of thirty days and with the previous permission in writing of the Chief Inspector.]

[a] *Substituted* for S. 44 by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 25 [w. e. f. 16-1-1960].

#### **45. Employment of children.**

(1) No child shall be employed in any mine, nor shall any child be allowed to be present in any part of a mine which is below ground or in any '[open cast working] in which any mining operation is being carried on.

(2) After such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present

in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.

[a] Substituted for "open excavation," by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 28 [w. e. f. 16-1-1960].

#### \*[46. Employment of women.

(1) No woman shall, notwithstanding anything contained in any other law, be employed—

(a) in any part of a mine which is below ground;

(b) in any mine above ground except between the hours of 6 a.m. and 7 p.m.

(2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification<sup>b</sup> in the Official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any woman between the hours of 10 p.m. and 5 a.m. is permitted thereby.]

[a] Substituted for S. 46, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 27 [w. e. f. 16-1-1960]. [b] For such notification issued under the former section, see Notfn. No. S. R. O. 505 D/- 9-3-1953, Gaz. of Ind., 1953, Pt. II-Sec. 3, p. 308.

#### 47. Disputes as to age. [Omitted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 28 [w. e. f. 16-1-1960].]

#### 48. Registers of persons employed.

\*[(1) For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine showing in respect of each such person—

(a) the name of the employee with the name of his father or, of her husband, as the case may be, and such other particulars as may be necessary for purposes of identification;

(b) the age and sex of the employee;

(c) the nature of employment (whether above ground or below ground, and if above ground, whether in open cast workings or otherwise) and the date of commencement thereof;

(d) in the case of an adolescent, reference to the certificate of fitness granted under section 40;

(e) such other particulars as may be prescribed;

and the relevant entries shall be authenticated by the signature or the thumb impression of the person concerned.]

(2) The entries in the register prescribed by sub-section (1) shall be such that workers working in accordance therewith would not be working in contravention of any of the provisions of this Chapter.

(3) No person shall be employed in a mine until the particulars required by sub-section (1) have been recorded in the register in respect of such person and no person shall be employed except during the periods of work shown in respect of him in the register.

<sup>b</sup>[(4) For every mine other than a mine which, for any special reason to be recorded, is exempted by the Central Government by general or special order, there shall be kept in the prescribed form and place separate registers showing in respect of each person employed in the mine—

(a) below ground;

(b) above ground in open cast workings; and

(c) above ground in other cases—

(i) the name of the employee;

- (ii) the class or kind of his employment;
- (iii) where work is carried on by a system of relays, the shift to which he belongs and the hours of the shift.]

(5) The register of persons employed below ground referred to in sub-section (4) shall show at any moment the name of every person who is then present below ground in the mine.

[(6) No person shall enter any open cast working or any working below ground unless he has been permitted by the manager or is authorised under this Act or any other law to do so.]

[a] *Substituted* for sub-sec. (1), by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 29 [w. e. f. 16-1-1960.] [b] *Substituted* for sub-sec. (4), *ibid.* [c] *Inserted, ibid.*

## CHAPTER VII

### LEAVE WITH WAGES

#### •[49. Application of Chapter.

The provisions of this Chapter shall not operate to the prejudice of any right to which a person employed in a mine may be entitled under any other law or under the terms of any award, agreement or contract of service :

Provided that when such award, agreement or contract of service provides for a longer leave with wages than provided in this Chapter, such person shall be entitled only to such longer leave.

[a] Sections 49 to 56 both inclusive were *substituted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 30 [w. e. f. 16-1-1960].

#### 50. Leave defined.

For the purposes of this Chapter, leave shall not include weekly days of rest or holidays for festivals or other similar occasions whether occurring during or at either end of the period of leave.

#### 51. Calendar year defined.

For the purposes of this Chapter, a calendar year shall mean the period of twelve months beginning with the first day of January in any year.

#### 52. Annual leave with wages.

(1) Every person employed in a mine who has completed a calendar year's service therein shall be allowed, during the subsequent calendar year, leave with wages, calculated,—

- (a) in the case of a person employed below ground, at the rate of one day for every sixteen days of work performed by him, and
- (b) in any other case, at the rate of one day for every twenty days of work performed by him.

(2) A calendar year's service referred to in sub-section (1) shall be deemed to have been completed,—

- (a) in the case of a person employed below ground in a mine, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine; and
- (b) in the case of any other person, if he has during the calendar year put in not less than two hundred and forty attendances at the mine.

*Explanation.*—For the purpose of this sub-section—

- (a) any days of lay-off by agreement or contract or as permissible under the standing order;
- (b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed; shall be deemed to be the days on which the employee has worked in a mine

for the purpose of computation of the attendances, but he shall not earn leave for these days.

(3) A person whose service commences otherwise than on the first day of January shall be entitled to leave with wages in the subsequent calendar year at the rates specified in sub-section (1), if—

(a) in the case of a person employed below ground in a mine, he has put in attendances for not less than one-half of the total number of days during the remainder of the calendar year; and

(b) in any other case, he has put in attendances for not less than two-thirds of the total number of days during the remainder of the calendar year.

(4) Any leave not taken by a person to which he is entitled in any one calendar year under sub-section (1) or sub-section (3) shall be added to the leave to be allowed to him under sub-section (1) during the succeeding calendar year :

Provided that the total number of days of leave which may be accumulated by any such person shall not at any one time exceed thirty days in all :

Provided further that any such person who has applied for leave with wages but has not been given such leave in accordance with sub-section (6) shall be entitled to carry forward the unavailed leave without any limit.

(5) Any such person may apply in writing to the manager of the mine not less than fifteen days before the day on which he wishes his leave to begin, for all leave or any portion thereof then allowable to him under sub-sections (1), (3) and (4) :

Provided that the number of times in which leave may be taken during any one calendar year shall not exceed three.

(6) An application for such leave made in accordance with sub-section (5) shall not be refused unless the authority empowered to grant the leave is of opinion that owing to the exigencies of the situation the leave should be refused.

(7) If a person employed in a mine wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (5).

(8) If the employment of a person employed in a mine is terminated by the owner, agent or manager of the mine before he has taken the entire leave to which he is entitled up to the day of termination of his employment, or if such person having applied for and having not been granted such leave, quits his employment before he has taken the leave, the owner, agent or manager of the mine shall pay him the amount payable under section 53, in respect of the leave not taken, and such payment shall be made, where the employment of the person is terminated by the owner, agent or manager, before the expiry of the second working day after such termination, and where a person himself quits his employment, on or before the next pay day.

(9) The unavailed leave of a person employed in a mine shall not be taken into consideration in computing the period of any notice required to be given before the termination of his employment.

*Explanation.*—For the purposes of sub-sections (1) and (3), any fraction of leave of half a day or more shall be treated as one full day and fraction of less than half a day shall be omitted.

#### OBJECTS AND REASONS

*Sub-sections (1) and (2).*—"The distinction between employees paid on monthly basis, piece-rate basis and others employed either above ground or below ground has been removed and the rate of leave increased. Under the proposed amendment, a person employed below ground is eligible for leave at the rate of one day for every sixteen days of work

performed by him during a calendar year and in any other case, at the rate of one day for every twenty days. A calendar year's service shall be deemed to have been completed in the case of a person employed below ground, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine, and in the case of any other

person, not less than two hundred and forty attendances.

In the proposed section 52 (2) a new explanation has been included to make it clear that

absence due to lay-off or maternity leave or leave earned in the previous year will also be computed for the purpose of attendance."

—S. O. R.

### 53. Wages during leave period.

For the leave allowed to a person employed in a mine under section 52, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he was employed during the month immediately preceding his leave, exclusive of any overtime wages and bonus but inclusive of any dearness allowance and compensation in cash including such compensation, if any, accruing through the free issue of foodgrains and other articles as persons employed in the mine may, for the time being, be entitled to :

Provided that if no such average earnings are available, then the average shall be computed on the basis of the daily average of the total full-time earnings of all persons similarly employed for the same month.

### 54. Payment in advance in certain cases.

Any person employed in a mine who has been allowed leave for not less than four days, shall, before his leave begins, be paid, the wages due for the period of the leave allowed.

### 55. Mode of recovery of unpaid wages.

Any sum required to be paid by the owner, agent or manager of a mine under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936.

### 56. Power to exempt mines.

Where the Central Government is satisfied that the leave rules applicable to persons employed in any mine provide benefits which in its opinion are not less favourable than those provided for in this Chapter, it may, by order in writing and subject to such conditions as may be specified therein, exempt the mine from all or any of the provisions of this Chapter.]

## CHAPTER VIII

### REGULATIONS, RULES AND BYE-LAWS

### 57. Power of Central Government to make regulations.

The Central Government may, by notification in the Official Gazette, make regulations\* consistent with this Act for all or any of the following purposes, namely:—

- (a) for prescribing the qualifications required for appointment as Chief Inspector or Inspector;
- (b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act;
- (c) for prescribing the duties of owners, agents and managers of mines and of persons acting under them, and for prescribing the qualifications (including age) of agents and managers of mines and of persons acting under them;
- (d) for requiring facilities to be provided for enabling managers of mines and other persons acting under them to efficiently discharge their duties;

#### Section 57 — Note 1

[1] In the absence of express provisions to the contrary in the Act the Indian Metalliferous Mines Regulations (1928) framed under the repealed Indian Mines Act, 1923, are deemed to have been issued under the new Act by virtue of S. 24, General Clauses Act, 1900

Mys 245 (247) [A I R V 47 C 86] : 1960 Cri L Jour 1227 (DB) + 1960 Orissa 180 (182, 183) [AIR V 47 C 61] : I L R (1960) Cut 162 : 1960 Cri L Jour 1355. (Hence the Regulations would constitute a law in force within the meaning of Art. 20 of the Constitution.)

- (e) for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them; and the granting and renewal of certificates of competency;
- (f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates;
- (g) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications;
- [(h) for providing for inquiries to be made under this Act, including any inquiry relating to misconduct or incompetence on the part of any person holding a certificate under this Act and for the suspension or cancellation of any such certificate and for providing, wherever necessary, that the person appointed to hold an inquiry shall have all the powers of a civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects;]
- (i) for regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage, conveyance and use of explosives;
- [(j) for prohibiting, restricting or regulating the employment of adolescents and women in mines or in any class of mines or on particular kinds of labour which are attended by danger to the life, safety or health of such persons and for limiting the weight of any single load that may be carried by any such person;]
- (k) for providing for the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways and subsidences ;
- (l) for prohibiting the employment in a mine either as manager or in any other specified capacity of any person except persons paid by the owner of the mine and directly answerable to the owner or manager of the mine ;
- [(m) for providing for the safety of the roads and working places in mines, including the siting, maintenance and extraction or reduction of pillars or blocks of minerals and the maintenance of sufficient barriers between mine and mine ;
- (n) for the inspection of workings and sealed off fire-areas in a mine, and for the restriction of workings in the vicinity of the sea or any lake or river or any other body of surface water, whether natural or artificial, or of any public road or building, and for requiring due precaution to be taken against the irruption or inrush of water or other liquid matter into, outbreak of fire in or premature collapse of, any workings;]
- (o) for providing for the ventilation of mines and the action to be taken in respect of dust, fire, and inflammable and noxious gases, including precautions against spontaneous combustion, underground fire and coal dust;
- [(p) for regulating, subject to the provisions of the Indian Electricity Act, 1910, and of any rules made thereunder, the generation, storage, transformation, transmission and use of electricity in mines and for providing for the care and the regulation of the use of all electrical apparatus and electrical cables in mines and of all other machinery and plant therein;]
- (q) for providing for the safety of persons present on haulage roads and for restricting the use of certain classes of locomotives underground ;
- (r) for providing for proper lighting of mines and regulating the use of safety



lamps therein and for the search of persons entering a mine in which safety lamps are in use ;

- (s) for providing against explosions or ignitions \*{of inflammable gas or dust} or irruptions of or accumulations of water in mines and against danger arising therefrom and for prohibiting, restricting or regulating the extraction of minerals in circumstances likely to result in the premature collapse of \*{workings} or to result in or to aggravate the collapse of \*{workings} or irruptions of water or ignitions in mines ;
- (t) <sup>h</sup>{for prescribing under clause (q) of sub-section (1) of section 23, the types of accidents and for prescribing the notices} of accidents and dangerous occurrences, and the notices, reports and returns of mineral output, persons employed and other matters provided for by regulations, to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the time within which they are to be submitted ;
- <sup>1</sup>{(u) for prescribing the plans, and sections and field notes connected therewith, to be kept by owners, agents and managers of mines and the manner and places in which such plans, sections and field notes are to be kept for purposes of record and for the submission of copies thereof to the Chief Inspector; and for requiring the making of fresh surveys and plans by them, and in the event of non-compliance, for having the survey made and plans prepared through any other agency and for the recovery of expenses thereof in the same manner as an arrear of land revenue;}
- (v) for regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines ;
- (w) for prescribing the form of, and the particulars to be contained in, the notice to be given by the owner, agent or manager of a mine under section 16 ;
- (x) for prescribing the notice to be given by the owner, agent or manager of a mine before mining operations are commenced at or extended to any point within fifty yards of any railway subject to the provisions of the Indian Railways Act, 1890 or of any J[public roads or other works, as the case may be, which are maintained by the Government or any local authority];
- (y) for the protection from injury, in respect of any mine when the workings are discontinued, of property vested in the Government or any local authority or railway company as defined in the Indian Railways Act, 1890;
- \*{[(yy) for requiring protective works to be constructed by the owner, agent or manager of a mine before the mine is closed, and in the event of non-compliance, for getting such works executed by any other agency and for recovering the expenses thereof from such owner in the same manner as an arrear of land revenue;]}
- (z) for requiring the fencing of any mine or part of a mine or any quarry, incline, shaft, pit or outlet, whether the same is being worked or not, or any dangerous or prohibited area, subsidence, haulage, tramline or pathway, where such fencing is necessary for the protection of the public; and
- (zz) any other matter which has to be or may be prescribed.

[a] For "Mysore Gold Mines Regulation, 1953," see Gaz. of Ind., 1953, Pt. II, Sec. 3, p. 1504 and for "Coal Mines Regulations, 1957, see Gaz. of Ind., 1957, Extra, Pt II-Sec. 3, p. 2589. [b] Substituted for "qualifications of managers," by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 31 [w.e.f. 18-1-1960]. [c] Substituted for clause (g), *ibid.* [d] Substituted for clause (j), *ibid.* [e] Substituted for clauses (m) and (n), *ibid.* [f] Substituted for clause (p), *ibid.* [g] *Inverted*, *ibid.* [h] Substituted for "for prescribing the notices,"

*ibid.* [i] Substituted for clause (u), *ibid.* [j] Substituted for "public work or classes of public works which the Central Government may, by general or special order, specify in this behalf," *ibid.*

### OBJECTS AND REASONS

*Clause (h)*—"Existing clause (h) provides only for the making of inquiries into the conduct of managers and of persons acting under them. As an agent does not come under the category of such persons, it is proposed to amend clause (h) to provide for inquiries to be made into charges of misconduct or incompetency on the part of any person holding a certificate under the Act. Provision has also been made to vest the person conducting the inquiry with the powers of a civil court for enforcing the attendance of witnesses and compelling the production of documents."

*Clause (p)*—"Provision has been made for framing regulations in regard to use of electricity and the care and maintenance of electrical apparatus and electrical cables in mines. This is considered necessary, as with the growing use of electricity in mines, there is greater possibility of accidents from this source and it is desirable to include in the regulations all the relevant provisions instead of the existing ones contained in the Indian Electricity Rules."

*Clause (s)*—"In clause (s) reference has to be made to inflammable gas and also to dust as in certain mines coal dust is explosive in character if sufficient concentration is present in the mine atmosphere. The reference to premature collapse is in respect of mine workings and this has been made clear."

*Clause (u)*—"It is necessary to include in clause (u) "sections" also with "plans," because where a coal or other mineral deposit is steep, it is necessary to maintain separate sections as well as plans. Also in the preparation of plans and sections, field notes form an important part of the record and it is necessary that such records should also be maintained in the office of a mine for verification of surveys. Wrong plans are liable to endanger safety in mines and it is necessary that power should be available for requiring a fresh survey to be conducted and, in the event of non-compliance, for getting the plans prepared by any other agency."

—S. O. R.

### Power of Central Government to make rules.

The Central Government may, by notification in the Official Gazette, make rules\* consistent with this Act for all or any of the following purposes, namely:—

- (a) for providing for the appointment of Chairman and members of Mining Boards, and for regulating the procedure of such Boards;
- (b) for prescribing the form of the register referred to in sub-section (3) of section 23;
- (c) for providing for the appointment of Courts of inquiry under section 24, for regulating the procedure and powers of such Courts, for the payment of travelling allowance to the members, and for the recovery of the expenses of such Courts\* [including any other expenses connected with the inquiry] from the manager, owner or agent of the mine concerned;

### Section 58 — Note 1

[1] The maintenance of creche is part of mining operations for the breach of which not only the owner but also his agent and the manager is liable. ('57) 1957 Cri L Jour 122 (124) (Cal).

[2] Under R. 7 (1) of the Mines Creche Rules of 1946 it is obligatory on the owner or manager of a mine where women are employed and where a creche is maintained to employ the Creche-in-charge as well as an inferior staff irrespective of the fact whether the women employed in the mine have children or not. ('57) 1957 Cri L Jour 122 (124) (Cal).

[3] Under S. 58 (d) the Central Government is empowered to make rules prescribing the nature and extent of the supervision to be provided in a creche and the nature and extent of the supervision certainly includes the appointment of supervisors such as a Creche-in-charge and also inferior staff. As regards

qualification and the approval of the staff although the Central Government has left those things to the discretion of a competent authority what has been left to the competent authority is by no means a legislative act but merely an executive act. In this view, R. 7 (1) of the Mines Creche Rules, 1946 is neither ultra vires nor does it offend against the Rule against the delegated legislation. ('57) 1957 Cri L Jour 122 (123) (Cal).

[4] The power of making rules for the maintenance of a creche in mines has been considerably widened under the present (1952) Act. As the powers are widened the Rules framed under narrower powers under the old Act may well be said to have been framed under the wider powers (vide S. 24, General Clauses Act) and cannot be said to have lapsed with the repeal of the old Act. ('57) 1957 Cri L Jour 122 (123) (Cal).

- (d) for requiring the maintenance in mines wherein any women are employed or were employed on any day of the preceding twelve months of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women employed in the mine, the number and standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein;
- (e) for requiring the maintenance at or near pit-heads of bathing places equipped with shower baths and of locker-rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed, and for prescribing, either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and standards of such places and rooms;
- (f) for prescribing the standard of sanitation to be maintained and the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking-water, [\* \* \*];
- <sup>b</sup>[(ff) for providing for the supply and maintenance of medical appliances and comforts and for prescribing the contents and number of first-aid boxes and cupboards, the training in first-aid work, the size and equipment of first-aid rooms and staff in charge thereof and the arrangements for conveyance of injured persons to hospitals or dispensaries;
- (fff) for requiring the imparting of practical instruction to, or the training of, persons employed or to be employed in mines otherwise than in a position of supervision or management and for prescribing schemes for such instruction and training;]
- (g) for prohibiting the possession or consumption of intoxicating drinks or drugs in a mine and the entry or presence therein of any person in a drunken state;
- (h) for prescribing the forms of notices required under section 36, and for requiring such notices to be posted also in specified languages;
- (i) for defining the persons who shall, for the purpose of section 37, be deemed to be persons holding positions of supervision or management or employed in a confidential capacity;
- (j) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner to have completed their fifteenth year, and for prescribing the manner and the circumstances in which such certificates may be granted and revoked;
- (k) for prescribing the form of the certificate of fitness required by section 40, the conditions subject to which and the circumstances in which they may be granted and the circumstances in which they may be revoked;
- <sup>b</sup>[(kk) for requiring persons employed or seeking employment at mines to submit themselves for medical examination and for prohibiting on medical grounds the employment of any person at a mine either absolutely or in a particular capacity or in particular work;]
- <sup>d</sup>[(l) for prescribing the form of registers required by section 48 and the maintenance and form of registers for the purposes of Chapter VII;]
- (m) for \*prescribing abstracts of this Act and of the regulations and rules and the language in which the abstracts and bye-laws shall be posted as required by sections 61 and 62;
- (n) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the parti-

culars to be contained in them, and the times, within which they are to be submitted;

- (o) for requiring the provision and maintenance in mines, wherein more than <sup>1</sup>[• • •] fifty persons are ordinarily employed, of adequate and suitable shelters for taking food with provision for drinking water;
- (p) for requiring the provision and maintenance in any mine specified in this behalf by the Chief Inspector or Inspector, wherein more than two hundred and fifty persons are ordinarily employed, of a canteen or canteens for the use of such persons;
- (q) for requiring the employment in every mine wherein five hundred or more persons are ordinarily employed, of such number of welfare officers as may be specified and for prescribing the qualifications and the terms and conditions of, and the duties to be performed by, such welfare officers;
- (r) for requiring the establishment of central rescue stations for groups of specified mines<sup>2</sup> or for all mines in a specified area, and prescribing how and by whom such stations shall be established;
- (s) for providing for the management of central rescue stations, and regulating the constitution, powers and functions of, and the conduct of business by the authorities (which shall include representatives of the owners and managers of, and of the <sup>3</sup>[persons] employed in, the mines or groups of mines concerned) charged with such management;
- (t) for prescribing the position, equipment, control, maintenance and functions of central rescue stations;
- (u) for providing for the levy and collection of a duty of excise (at a rate not exceeding six pies per ton) on coke and coal produced in and despatched from mines specified under clause (r) in any group or included under clause (r) in any specified area, the utilisation of the proceeds thereof for the creation of a central rescue station fund for such group or area and the administration of such funds;
- (v) for providing for the formation, training, composition and duties of rescue brigades <sup>4</sup>[and for the terms and conditions of service of persons trained in rescue work employed in mines]; and generally for the conduct of rescue work in mines; and
- (w) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this Act.

[a] For Mysore Gold Mines Rules, 1952, see Gazette of India, 1953, Pt. II-Sec. 3, p. 1502; for the Mines Rules, 1955, see *ibid.*, 1955, Pt. II-Sec. 3, p. 1172. [b] Inserted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 32 [w. e. f. 16-1-1960]. [c] The words "the supply and maintenance of medical appliances and comforts, and the training of men in ambulance work" were omitted, *ibid.* [d] Substituted for clause (l), *ibid.* [e] For the Mines (Posting of Abstracts) Rules, 1954, see Gaz. of Ind., 1954, Pt. II-Sec. 3, p. 1797. [f] The words "one hundred and" were omitted, by Act LXII of 1959, S. 32 [w. e. f. 16-1-1960]. [g] For the Coal Mines Rescue Rules, 1959, see G. S. R. 873 dated 6-7-1959 published in Gaz. of Ind., 1959, Pt. II-Sec. 3 (i), page 1082. [h] Substituted for "minors" by Act LXII of 1959, S. 32 [w. e. f. 16-1-1960].

## 59. Prior publication of regulations and rules.

(1) The power to make regulations and rules conferred by sections 57 and 58 is subject to the condition of the regulations and rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of regulations or rules to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information.

\*[(3) \* \* \* \* \*

(4) No <sup>b</sup>[regulation or rule] shall be made unless the draft thereof has been referred to every Mining Board constituted in that part of the territories to which this Act extends which is affected by the <sup>b</sup>[regulation or rule], and unless each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

(5) Regulations and rules shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

(6) The provisions of sub-sections (1), (2) and (4) shall not apply to the first occasion on which rules referred to in clause (d) or clause (e) of section 58 are made.

(7) The regulations and rules made under sections 57 and 58 shall be laid before Parliament, as soon as may be, after they are made.

[a] Sub-section (3) was omitted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 33 [w. e. f. 16-1-1960]. [b] Substituted for "rule", *ibid*.

## 60. Power to make regulations without previous publication.

Notwithstanding anything contained in sub-sections (1), (2) and <sup>a</sup>[(4)] of section 59, regulations under <sup>b</sup>[ \* \* \* ] section 57 may be made without previous publication and without <sup>c</sup>[\*] reference to Mining Boards, if the Central Government is satisfied that for the prevention of apprehended danger or the speedy remedy of conditions likely to cause danger it is necessary in making such regulations to dispense with the delay that would result from such publication and reference :

Provided that any regulations so made shall not remain in force for more than <sup>d</sup>[one year] from the making thereof.

[a] Substituted for "(3)", by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 34 [w. e. f. 16-1-1960]. [b] The words, brackets and letters "clause (i) and clauses (k) to (s) excluding clause (l) of" were omitted, *ibid*. [c] The word "previous" was omitted, *ibid*. [d] Substituted for "two years", *ibid*.

## 61. Bye-laws.

(1) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector or Inspector, frame and submit to the Chief Inspector or Inspector a draft of such bye-laws, not being inconsistent with this Act or any regulations or rules for the time being in force, for the control and guidance of the persons acting in the management of, or employed in, the mine as such owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine.

(2) If any such owner, agent or manager—

(a) fails to submit within two months a draft of bye-laws after being called upon to do so by the Chief Inspector or Inspector, or

(b) submits a draft of bye-laws which is not in the opinion of the Chief Inspector or Inspector sufficient, the Chief Inspector or Inspector may—

(i) propose a draft of such bye-laws as appear to him to be sufficient, or

(ii) propose such amendments in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient, and shall send such draft bye-laws or draft amendments to the owner, agent or manager as the case may be, for consideration.

(3) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Chief Inspector or Inspector to the owner, agent or manager under the provisions of sub-section (2), the Chief Inspector or Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under sub-section (1), the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the

Mining Board or, where there is no Mining Board, to such officer or authority as the Central Government may, by general or special order, appoint in this behalf.

(4) (a) When such draft bye-laws have been agreed to by the owner, agent or manager and the Chief Inspector or Inspector, or, when they are unable to agree, have been settled by the Mining Board or such officer or authority as aforesaid, a copy of the draft bye-laws shall be sent by the Chief Inspector or Inspector to the Central Government for approval.

(b) The Central Government may make such modification of the draft bye-laws as it thinks fit.

(c) Before the Central Government approves the draft bye-laws, whether with or without modifications, there shall be published, in such manner as the Central Government may think best adapted for informing the persons affected, notice of the proposal to make the bye-laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days) within which any objections with reference to the draft bye-laws, made by or on behalf of persons affected should be sent to the Central Government.

(d) Every objection shall be in writing and shall state -

(i) the specific grounds of objections, and

(ii) the omissions, additions or modifications asked for.

(e) The Central Government shall consider any objection made within the required time by or on behalf of persons appearing to it to be affected, and may approve the bye-laws either in the form in which they were published or after making such amendments thereto as it thinks fit.

(5) The bye-laws, when so approved by the Central Government shall have effect as if enacted in this Act, and the owner, agent or manager of the mine shall cause a copy of the bye-laws, in English and in such other language or languages as may be prescribed, to be posted up in some conspicuous place at or near the mine, where the bye-laws may be conveniently read or seen by the persons employed; and, as often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.

(6) The Central Government may, by order in writing rescind, in whole or in part, any bye-law so made, and thereupon such bye-law shall cease to have effect accordingly.

## **62. Posting up of abstracts from Act, regulations, etc.**

There shall be kept posted up at or near every mine in English and in such other language or languages as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

## **CHAPTER IX**

[Note.—Sections 64, 65, 66, 67 and 69 have been amended and sections 72A to 74 have been substituted for sections 73 and 74. "These sections relate to the punishment that may be imposed for contravention of different provisions of the Act. In mines, violation of statutory provisions has a special significance as the safety of limbs and lives of the persons employed depends upon the proper observance of the provisions. Experience has shown that the penalty laid down for contravention at present is not of a sufficiently deterrent nature and it has, therefore, been increased."—S. O. R.]

## **PENALTIES AND PROCEDURE**

### **63. Obstruction.**

(1) Whoever obstructs the Chief Inspector, an Inspector, or any person authorised under section 8 in the discharge of his duties under this Act, or refuses or wilfully neglects to afford the Chief Inspector, Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine, shall be punishable

with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

#### 64. Falsification of records, etc.

Whoever—

- (a) counterfeits, or knowingly makes a false statement in, any certificate, or any official copy of a certificate, granted under this Act, or
- (b) knowingly uses as true any such counterfeit or false certificate, or
- (c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate, or the renewal of a certificate, under this Act, or any employment in a mine, or
- \*[(d) falsifies any plan, section, register or record, the maintenance of which is required by or under this Act or produces before any authority such false plan, section, register or record, knowing the same to be false, or]
- (e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to <sup>b</sup>[one thousand rupees], or with both.

[a] Substituted for clause (d) by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 35 [w. e. f. 16-1-1960]. [b] Substituted for "five hundred rupees", *ibid*.

#### 65. Use of false certificates of fitness.

Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 40 a certificate granted to another person under that section, or, having been granted a certificate of fitness to himself under that section, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to <sup>a</sup>[two hundred] rupees, or with both.

[a] Substituted for "fifty" by the Mines (Amendment) Act, 1959 (LXII of 1959) S. 36 [w. e. f. 16-1-1960].

#### 66. Omission to furnish plans, etc.

Any person who, without reasonable excuse the burden of proving which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, <sup>a</sup>[section,] return, notice, register,

##### Section 66 — Note 1

[1] Though the Regulations framed under the Act of 1923 are deemed by virtue of S. 24 of the General Clauses Act to be made under the Act of 1952 contraventions of those Regulations cannot be punished under S. 66, especially when they occurred after the new Act came into force. The punishments if made will offend Art. 20 of the Constitution. 1956 Andh 24 (25, 26) [AIR V 43 C 7] : I L R (1955) Andh 497 : 1956 Cri L Jour 29. (The Regulations although they are deemed to be made under the new Act are not "laws in

force" within the meaning of Art. 20.)

[But see 1960 Orissa 180-181] [A I R V 47 C 61] : I L R (1960) Cut 162 : 1960 Cri L Jour 1355. (Omission to forward annual returns in accordance with S. 3 of the Indian Metalliferous Mines Regulation of 1926 can be punished under S. 66—Where there is on record a reminder issued by the Chief Inspector of Mines the Court can presume that it was issued by that officer only after being satisfied that no return was received in his office and place the onus on the accused to prove the contrary.)]



record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to <sup>b</sup>[one thousand] rupees.

[a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 37 [w. e. f. 16-1-1960]. [b] *Substituted* for "two hundred", *ibid*.

### 67. Contravention of provisions regarding employment of labour.

Whoever, save as permitted by section 38, contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to <sup>a</sup>[one thousand] rupees, or with both <sup>b</sup>[ \* \* \* ].

[a] *Substituted* for "five hundred", by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 38 [16-1-1960]. [b] The words "and, if the contravention is continued after conviction, with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued" were *omitted*, *ibid*.

### 68. Penalty for double employment of young persons.

If a child or an adolescent is employed in a mine on any day on which he has already been employed in another mine, his parent or guardian or the person who has the custody of such child or adolescent or who obtains any direct benefit from his wages shall be punishable with fine which may extend to fifty rupees, unless it appears to the Court that the child or adolescent was so employed without the consent or connivance of such parent, guardian or person.

### 69. Failure to appoint manager.

Whoever in contravention of the provisions of section 17, fails to appoint a manager shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to <sup>a</sup>[two thousand and five hundred] rupees, or with both <sup>b</sup>[ \* \* \* ].

[a] *Substituted* for "five hundred" by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 39 [16-1-1960]. [b] The words "and, if the contravention is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued" were *omitted*, *ibid*.

### 70. Notice of accidents.

(1) Whoever in contravention of the provision of sub-section (1) of section 23 fails to give notice of any accidental occurrence or to post a copy of the notice on the special notice board referred to in that sub-section and to keep it there for the period specified shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

(2) Whoever in contravention of a direction made by the Central Government under sub-section (3) of section 23 fails to record in the prescribed register or to give notice of any accidental occurrence shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

### 71. Owner, etc., to report to Chief Inspector in certain cases.

Where the owner, agent or manager of a mine, as the case may be, has taken proceedings under this Act against any person employed in or about a mine in respect of an offence under this Act, he shall within twenty-one days from the date of the judgment or order of the Court report the result thereof to the Chief Inspector.

#### Section 69 — Note 1

[1] The sentence imposed by the Magistrate under this section will not be enhanced in revision unless the Mines Department had placed before the trying Magistrate proper

materials and drawn his attention to the fact that on those materials a deterrent punishment need be awarded. 1959 Pat 222 (224) [AIR V 46 C 58] : 1959 Cri L Jour 642.



**72. Obligation of persons employed in a mine.**

No person employed in a mine shall—

- (a) wilfully interfere with or misuse any appliance, convenience or other thing provided in a mine for the purpose of securing the health, safety or welfare of the persons employed therein;
- (b) wilfully and without reasonable cause do anything likely to endanger himself or others;
- (c) wilfully neglect to make use of any appliance or other thing provided in the mine for the purpose of securing the health or safety of the persons employed therein.

**\*[72A. Special provision for contravention of certain regulations.**

Whoever contravenes any provisions of any regulation or of any bye-law or of any order made thereunder, relating to matters specified in clauses (d), (i), (m), (n), (o), (p), (r), (s) and (u) of section 57 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

[a] Sections 72-A, 72-B, 72C, 73 and 74 were substituted for the original sections 73 and 74, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 40 [w. e. f. 16-1-1960].

**72B. Special provision for contravention of orders under section 22.**

Whoever continues to work a mine in contravention of any order issued under sub-section (1A), sub-section (2) or sub-section (3) of section 22 shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five thousand rupees.

**72C. Special provision for contravention of law with dangerous results.**

(1) Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder (other than an order made under sub-section (1A) or sub-section (2) or sub-section (3) of section 22), shall be punishable—

- (a) if such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both; or
- (b) if such contravention results in serious bodily injury, with imprisonment which may extend to one year, or with fine which may extend to three thousand rupees or with both; or
- (c) if such contravention otherwise causes injury or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by sub-section (1).

(3) Any Court imposing or confirming in appeal, revision or otherwise a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death, to his legal representative :

**Section 72C — Note 1**

[1] The burden of establishing that the licensees had infringed the several rules relating to the working of the mines and that the accident was entirely due to their negligence is on the prosecution and it cannot be relieved of this burden even though it had found it difficult to get direct and independent evi-

dence. No conviction can be based on a mere suspicion however strong it may be. 1960 Mys 245 (247, 249) [A I R V 47 C 86] : 1960 Cri L Jour 1227 (DB). (Sole evidence of an expert who visited the premises immediately after the accident is not sufficient to base a conviction.)

Provided that if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal.

### 73. General provision for disobedience of orders.

Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

### 74. Enhanced penalty after previous conviction.

If any person who has been convicted for an offence punishable under any of the foregoing provisions (other than sections 72B and 72C) is again convicted for an offence committed within two years of the previous conviction and involving a contravention of the same provision, he shall be punishable for each subsequent conviction with double the punishment to which he would have been liable for the first contravention of such provision.]

### 75. Prosecution of owner, agent or manager.

No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the district magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector :

Provided that in respect of an offence committed in the course of the technical direction and management of a mine, the district magistrate shall not institute any prosecution against an owner, agent or manager without the previous approval of the Chief Inspector.

### \*[76 Determination of owner in certain cases.

Where the owner of a mine is a firm or other association of individuals, all, or any of the partners or members thereof or where the owner of a mine is a

#### Section 73 — Note 1

[1] An agent or a manager can be held responsible under S. 73 read with S. 18 for non-compliance with the Mines Pithead Bath Rules and the Mines Creche Rules even though the duty to provide Pithead baths and creches has been imposed on the owner and not upon the agent or manager. 1957 Cal 483 (490) [(S) AIR V 44 C 132] : 1957 Cri L Jour 834 (DB)\* ('57) 1957 Cri L Jour 122 (124) (Cal).

[2] The failure to construct pithead baths and creches in accordance with the Mines Pithead Bath Rules and the Mines Creche Rules is a continuing offence and therefore the owner can be punished not only for his omission to do his duty within the prescribed period but also for continuing the breach of duty after the expiry of the prescribed time. 1957 Cal 483 (488) [(S) AIR V 44 C 132] : 1957 Cri L Jour 834 (DB).

[3] It is not necessary that there should have been a conviction for an offence for a breach of duty prescribed by the rules etc., before such breach of duty can constitute a continuing offence under S. 73. 1957 Cal 483 (488) [(S) AIR V 44 C 132] : 1957 Cri L Jour 834 (DB).

[4] The accused can be punished for contravening the rules, regulations and bye-laws made under the old repealed Act under Ss. 73

and 74 of this Act because they are not only kept alive by virtue of S. 24 of General Clauses Act but are deemed to have been made or issued under the provisions of new Act. 1958 Madh-Pra 162 (166) [AIR V 45 C 57] : 1958 Cri L Jour 767. (Though the rules in question are laws deemed to be in force they are laws in force within the meaning of Art. 20 of the Constitution and hence the conviction does not contravene that Article.)\* 1958 Pat 378 (382) [AIR V 45 C 127] : 37 Pat 726 (DB) + 1958 Raj 59 (59) [AIR V 45 C 18] : I L R (1958) 8 Raj 76 : 1958 Cri L Jour 226 (DB). (Validity of Indian Metalliferous Mines Regulations of 1926 framed under the Indian Mines Act of 1923.) + 1957 Cal 483 (492) [(S) AIR V 44 C 132] : 1957 Cri L Jour 834 (DB). (The rules framed under the repealed Act of 1923 must be held to be perfectly valid and part of the law in force within the meaning of the expression in Art. 20 of the Constitution.)

[But see 1958 Andh 24 (25, 26) [AIR V 43 C 7] : I L R (1955) Andh 497 : 1956 Cri L Jour 29. (Such a conviction would offend Art. 20 of the Constitution because a law which is only to be deemed to be in force cannot be described to be a "law in force" within the meaning of that Article.)]

company, all or any of the directors thereof or where the owner of a mine is a Government or any local authority, all or any of the officers or persons authorised by such Government or local authority, as the case may be, to manage the affairs of the mine, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable:

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated,—

- (a) in the case of a firm, any of its partners,
- (b) in the case of an association, any of its members,
- (c) in the case of a company, any of its directors,

who is resident in each case in any place to which this Act extends and who is in each case either in fact in charge of the management of, or holds the largest number of shares in, such firm, association or company, to assume the responsibility of the owner of the mine for the purposes of this Act, such partner, member or director, as the case may be, shall, so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid, be deemed to be the owner of the mine for the purposes of this Act unless a notice in writing cancelling his nomination or stating that he has ceased to be a partner, member or director, as the case may be, is received by the Chief Inspector.]

[a] Substituted for S. 76 by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 41 [w. e. f. 16-1-1960].

## **77. Exemption of owner, agent or manager from liability in certain cases.**

Where the owner, agent or manager of a mine, accused of an offence under this Act, alleges that another person is the actual offender, he shall be entitled, upon complaint made by him in this behalf "[and on his furnishing the known address of the actual offender] and on giving to the prosecutor not less than three clear days notice in writing of his intention so to do, to have that other person brought before the Court on the date appointed for the hearing of the case; and if, after the commission of the offence has been proved, the owner, agent or manager of the mine, as the case may be, proves to the satisfaction of the Court—

- (a) that he has used due diligence to enforce the execution of the relevant provisions of this Act, and
- (b) that the other person committed the offence in question without his knowledge, consent or connivance,

the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the owner, agent or manager of the mine, and the owner, agent or manager, as the case may be, shall be acquitted :

Provided that—

- (a) the owner, agent or manager of the mine, as the case may be, may be examined on oath and his evidence and that of any witness whom he calls in support shall be subject to cross-examination by or on behalf of the person he alleges as the actual offender and by the prosecutor;
- (b) if in spite of due diligence the person alleged as the actual offender cannot be brought before the Court on the date appointed for the hearing of the case, the Court shall adjourn the hearing thereof from time to time so however that the total period of such adjournments does not exceed three months, and if by the end of the said period the person alleged as the actual offender cannot be brought before the Court, the Court shall proceed to hear the case against the owner, agent or manager, as the case may be.

[a] Inserted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 42 [w. e. f. 16-1-1960].

**78. Power of Court to make orders.**

(1) Where the owner, agent or manager of a mine is convicted of an offence punishable under this Act, the Court may, in addition to awarding him any punishment, by order in writing, require him within a period specified in the order (which may be extended by the Court from time to time on application made in this behalf) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the owner, agent or manager of the mine, as the case may be, shall not be liable under this Act in respect of the continuance of the offence during the period or extended period, if any, but if on the expiry of such period or extended period the order of the Court has not been fully complied with, the owner, agent or manager, as the case may be, shall be deemed to have committed a further offence and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or with both.

**79. Limitation of prosecutions.**

No Court shall take cognizance of any offence under this Act, unless complaint thereof has been made—

- (i) within six months of the date on which the offence is alleged to have been committed, or
- (ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or
- (iii) in any case where a Court of inquiry has been appointed by the Central Government under section 24, within six months after the date of the publication of the report referred to in sub-section (4) of that section,

whichever is later.

\*[Explanation. — For the purposes of this section,—

- (a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;
- (b) where for the performance of any act time has been extended under this Act, the period of limitation shall be computed from the expiry of the extended period.]

[a] *Added* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 43 [w. e. f. 16-1-1960].

**OBJECTS AND REASONS**

*Explanation.* — “Under the existing provision no prosecution can lie under the Act even if the contravention continues, once the period of six months from the date of the

alleged offence or the date on which the alleged offence came to the knowledge of the Inspector has expired. This is an unsatisfactory situation which requires to be remedied

**Section 79 — Note 1**

[1] Where an Inspector acquires the knowledge of an offence for the first time as a result of an enquiry under S. 23 (2), the limitation for making a complaint regarding the offence would commence from the date on which such knowledge is acquired irrespective of the date of conclusion of the enquiry. In case however, an enquiry is made by an Inspector not empowered to make a complaint, the limitation would commence from the date on which the report of the enquiry is submitted to the Inspector authorised to make a complaint. 1958 Bom 243 (244) [A I R V 45 C 70] : I L R (1959) Bom 358 : 1958 Cri L Jour 756.

[2] The period of limitation prescribed under cl. (ii) of S. 79 does not begin to run from the date of the notice given under S. 23 (2) of an accident. Not does it begin to run from the date of expiry of the two months mentioned in that section. The reason is that on such a notice there is only knowledge of an accident and not the knowledge of an offence which furnishes the starting point of limitation under cl. (ii) of this section. 1958 Bom 243 (244) [A I R V 45 C 70] : I L R (1959) Bom 358 : 1958 Cri L Jour 756. (Delay in making an enquiry under S. 23 (2) cannot affect the question of limitation under this section.)

The proposed amendment seeks to provide that, in the case of a continuing offence, a fresh period of limitation would begin to run from every moment of the time during which the offence continues and where time has

been extended for the performance of any act, the period of limitation shall be computed from the expiry of the extended period."

—S. O. R.

### 80. Cognizance of offences.

No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

### \*[80A. Special provision regarding fine.

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for a Presidency Magistrate or a Magistrate of the first class to pass a sentence of fine exceeding two thousand rupees authorised by this Act on any person convicted of an offence thereunder.]

[a] *Inserted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 44 [w. e. f. 16-1-1960].*

### 81. Reference to Mining Board or Committee in lieu of prosecution in certain cases.

(1) If the Court trying any case instituted at the instance of the Chief Inspector or of the district Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Mining Board or a Committee it may stay the criminal proceedings, and report the matter to the Central Government with a view to such reference being made.

(2) On receipt of a report under sub-section (1), the Central Government may refer the case to a Mining Board or a Committee, or may direct the Court to proceed with the trial.

## CHAPTER X MISCELLANEOUS

### 82. Decision of question whether a mine is under this Act.

If any question arises as to whether any excavation or working <sup>a</sup>[or premises in or adjacent to and belonging to a mine, on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on] is a mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point.

[a] *Inserted by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 45 [w. e. f. 16-1-1960].*

### 83. Power to exempt from operation of Act.

<sup>a</sup>[(1)] The Central Government may, by notification<sup>b</sup> in the Official Gazette, exempt either absolutely or subject to any specified conditions any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any of the provisions of this Act :

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 45 unless it is also exempted from the operation of all the other provisions of this Act.

<sup>c</sup>[(2) The Central Government may, by general or special order and subject to such restrictions as it may think fit to impose, authorise<sup>d</sup> the Chief Inspector or any other authority to exempt, subject to any specified conditions, any mine or part thereof from the operation of any of the provisions of the regulations or rules under this Act if the Chief Inspector or such authority is of opinion that the conditions in any mine or part thereof are such as to render compliance with such provision unnecessary or impracticable.]

[a] Section 83 was re-numbered as sub-section (1) thereof, by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 46 [w.e.f.16-1-1960]. [b] See Notifn No. S.R.O. 1395, D/- 9-8-1952, in Gaz. of Ind., 1952, Pt. II-Sec. 3, p. 1231. [c] *Inserted by Act LXII of 1959,*

S. 46 [w.e.f. 16-1-1960]. [d] See Notifn. No. S.R.O. 2564 dated 13-10-1960 published in Gaz. of Ind., 1960, Pt. II-Sec. 3 (ii), page 3145.

#### 84. Power to alter or rescind orders.

The Central Government may reverse or modify any order passed under this Act.

#### 85. Application of Act to mines belonging to Government.

This Act shall [also] apply to mines belonging to the Government.

[a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 47 [w. e. f. 16-1-1960].

#### \*[85A. Persons required to give notice, etc., legally bound to do so.

Every person required to give any notice or to furnish any information to any authority under this Act shall be legally bound to do so within the meaning of section 176 of the Indian Penal Code.]

[a] *Inserted* by the Mines (Amendment) Act, 1959 (LXII of 1959), S. 48 [w. e. f. 16-1-1960].

#### 86. Application of certain provisions of Act 63 of 1948 to mines.

The Central Government may, by notification in the Official Gazette, direct that the provisions of Chapters III and IV of the Factories Act, 1948 shall, subject to such exceptions and restrictions as may be specified in the notification, apply to all mines and the precincts thereof.

#### 87. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

#### 88. Repeal of Act IV of 1923. [*Repealed by the Repealing and Amending Act, 1957 (XXXVI of 1957), section 2 and Sch. 1.*]

### [THE] MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1948 (ACT LIII of 1948)

Now see The Oilfields (Regulation and Development)  
Act, 1948 (LIII of 1948).

### [THE] MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957 (ACT LXVII of 1957)

[The Act printed here is as on 31-8-1960.]

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**THE FIRST SCHEDULE****THE SECOND SCHEDULE****THE THIRD SCHEDULE****STATEMENT OF OBJECTS AND REASONS**

"The differentiation made between petroleum and other minerals in Entries 53 and 54 of the Union List has rendered separate enactments for the two necessary. The present Bill deals only with minerals other than petroleum. At present both are dealt with under the Mines and Minerals (Regulation and Development) Act, 1948 (LIII of 1948).

Opportunity has been taken of putting forward this legislation to make some necessary changes in the provisions of the existing Act dictated by experience. These changes refer to—

- (i) the prescription of a maximum limit of 50 square miles for a prospecting licence [Clause 6 (1) (now S. 6)];
- (ii) the grant of a second renewal to the holder of a mining lease for iron ore and bauxite under certain circumstances [Clause 8 (2) (now S. 8 (2))];
- (iii) the authorisation of the Central Government to undertake prospecting and mining operations in any land after prior consultation with the State Government [Clause 16 (now S. 17)];
- (iv) the promulgation of rules for the bene-

ficiation of low grade ores [Clause 17 (2) (c) (now S. 18 (2) (c))];

- (v) the recovery of royalty, dead rent and other sums due to Government in the same manner as arrears of land revenue [Clause 24 (now S. 25)]; and

- (vi) the delegation of certain powers to State Governments and by State Governments to their subordinate authorities [Clause 25 (now S. 28)].

A number of provisions hitherto dealt with under the rule making powers of the Central Government have been transferred to the Act in order to restrict the scope of subsidiary legislation. These provisions are :

- (i) no concession shall be granted to a person not in possession of a certificate of approval [Clause 5 (1) (now S. 5)];
- (ii) the maximum period for which a prospecting licence or a mining lease may be granted [Clauses 7 and 8 (now Ss. 7 and 8)];
- (iii) the power to prescribe rates of royalty for various minerals [Clause 9 (now S. 9) and Schedule II];

(iv) applications for prospecting licences and mining leases to be made in prescribed forms [Clause 10 (1) (now S. 10)];

(v) the priorities to be observed in the grant of prospecting licences and mining

leases [Clause 11 (2) (now S. 11 (2)); and

(vi) the power to make rules for regulating the grant of mineral concessions [Clause 13 (now S. 13)]."

—Gaz. of Ind. 1957, Extra., Pt. II, Sec. 2, p. 392.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act XV of 1958.

—Amended by G.S.R. 191 dated 15-2-1960.

#### [THE] MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957

(ACT LXVII OF 1957)\*

[28th December, 1957.]

*An Act to provide for the regulation of mines and the development of minerals under the control of the Union.*

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows :

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1957, Extra., Pt. II, Sec. 2, p. 392; and for Report of the Joint Committee, see *ibid.*, p. 997.

#### *Preliminary.*

#### 1. Short title, extent and commencement.

(1) This Act may be called THE MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date\* as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 1-6-1958, see Notfn. No. G. S. R. 432, D/- 29-5-1958 published in Gaz. of Ind. 1958, Extra., Pt. II-Sec. 3 (i), p. 225.

#### 2. Declaration as to expediency of Union control.

It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.

#### 3. Definitions.

In this Act, unless the context otherwise requires,—

(a) "minerals" includes all minerals except mineral oils;

(b) "mineral oils" includes natural gas and petroleum;

(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification\* in the Official Gazette, declare to be a minor mineral;

[a] For such notification, see G. S. R. 436 dated 1-6-1958 published in Gaz. of Ind., 1958, Extra., Pt. II-Sec. 3 (i), page 229/1.

#### OBJECTS AND REASONS

"The Committee feel that sand used for industrial purposes particularly in the manufacture of glass should not be treated as a minor mineral. It is not possible to define this

kind of sand in technical and scientific terms. The Committee therefore consider that rules may describe such sand with reference to the purpose for which it may be used."—J. C. R.

(f) "prescribed" means prescribed by rules made under this Act;

(g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;



- (h) "prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits; and  
 (i) the expressions, "mine" and "owner", have the meanings assigned to them in the Mines Act, 1952.

*General restrictions on undertaking prospecting and mining operations.*

**4. Prospecting or mining operations to be under licence or lease.**

(1) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder :

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

(2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

**5. Restrictions on the grant of prospecting licences or mining leases.**

(1) No prospecting licence or mining lease shall be granted by a State Government to any person unless he—

- (a) holds a certificate of approval in the prescribed form from the State Government;
- (b) produces from the Income-tax Officer concerned an income-tax clearance certificate in the prescribed form; and
- (c) satisfies such other conditions as may be prescribed.

*Explanation.*—For the purposes of this sub-section, a person shall be deemed to hold a certificate of approval notwithstanding that at the relevant time his certificate of approval has expired if an application for its renewal is pending at that time.

(2) Except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted—

- (a) as respects any mineral specified in the First Schedule, or
- (b) to any person who is not an Indian national.

*Explanation.*—For the purposes of this sub-section, a person shall be deemed to be an Indian national—

- (a) in the case of a public company as defined in the Companies Act, 1956, only if a majority of the directors of the company are citizens of India and not less than fifty-one per cent. of the share capital thereof is held by persons who are either citizens of India or companies as defined in the said Act;
- (b) in the case of a private company as defined in the said Act, only if all the members of the company are citizens of India;
- (c) in the case of a firm or other association of individuals, only if all the partners of the firm or members of the association are citizens of India; and
- (d) in the case of an individual, only if he is a citizen of India.

**OBJECTS AND REASONS**

"The Committee feel that in addition to other conditions provided in the original clause 5, a person should also possess an income-tax clearance certificate before he can

obtain a prospecting licence or mining lease. Sub-section (1) has been redrafted accordingly."

—J. C. R.

## **6. Maximum area for which a prospecting licence or mining lease may be granted.**

(1) No person shall acquire in any one State in respect of any mineral or prescribed group of associated minerals—

- (a) one or more prospecting licences covering a total area of more than fifty square miles; or
- (b) one or more mining leases covering a total area of more than ten square miles :

Provided that if the Central Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, permit any person to acquire one or more prospecting licences or mining leases covering an area in excess of the aforesaid maximum.

(2) For the purposes of this section, a person acquiring by, or in the name of, another person a prospecting licence or mining lease which is intended for himself shall be deemed to be acquiring it himself.

## **7. Periods for which prospecting licences may be granted or renewed.**

(1) The period for which a prospecting licence may be granted shall not—

- (a) in the case of mica, exceed one year; and
- (b) in the case of any other mineral, exceed two years.

(2) A prospecting licence may be renewed for one or more periods each not exceeding the period for which the prospecting licence was originally granted if the State Government is satisfied that a longer period is required to enable the licensee to complete prospecting operations :

Provided that no prospecting licence granted in respect of a mineral specified in the First Schedule shall be renewed except with the previous approval of the Central Government.

### **OBJECTS AND REASONS**

"The Committee feel that provision should be made for the renewal of prospecting licences at the discretion of the State Government if circumstances so require, but such power should be exercised only with the pre-

vious approval of the Central Government in the case of minerals specified in the First Schedule. Clause 7 has been recast accordingly."

—J. C. R.

## **8. Periods for which mining leases may be granted or renewed.**

(1) The period for which a mining lease may be granted shall not—

- (a) in the case of coal, iron ore or bauxite, exceed thirty years; and
- (b) in the case of any other mineral, exceed twenty years.

(2) A mining lease may be renewed—

- (a) in the case of coal, iron ore or bauxite, for one period not exceeding thirty years; and
- (b) in the case of any other mineral, for one period not exceeding twenty years :

Provided that no mining lease granted in respect of a mineral specified in the First Schedule shall be renewed except with the previous approval of the Central Government.

(3) Notwithstanding anything contained in sub-section (2), if the Central Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease for a further period or periods not exceeding in each case the period for which the mining lease was originally granted.

## **9. Royalties in respect of mining leases.**

(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in

any law in force at such commencement, pay royalty in respect of any mineral removed by him from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed by him from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification :

Provided that the Central Government shall not—

- (a) fix the rate of royalty in respect of any mineral so as to exceed twenty per cent. of the sale price of the mineral at the pit's head, or
- (b) enhance the rate of royalty in respect of any mineral more than once during any period of four years.

*Procedure for obtaining prospecting licences or mining leases in respect of land in which the minerals vest in the Government.*

### **10. Application for prospecting licences or mining leases.**

(1) An application for a prospecting licence or a mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under sub-section (1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the licence or lease.

### **OBJECTS AND REASONS**

"The Committee feel that since the date of receipt of application decides the order of priority, an acknowledgment of the receipt of the application should be sent at once to the applicant. However as it is not possible to provide for various types of cases of applications (e. g. application sent by post) in the statute itself the matter is left to be regulated

by rules. Sub-cl. (2) has been amended accordingly.

"The Committee recommend that provision should be made in the rules for immediate acknowledgment of applications on their receipt and where application is given in person, acknowledgment may be given forthwith to the person presenting it."—J.C.R.

### **11. Preferential right of certain persons.**

(1) Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person :

Provided that the State Government is satisfied that the licensee has not committed any breach of the terms and conditions of the prospecting licence and is otherwise a fit person for being granted the mining lease.

(2) Subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later :

Provided that where any such applications are received on the same day, the State Government, after taking into consideration the matters specified in sub-section (3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in sub-section (2) are the following :—

- (a) any special knowledge of, or experience in, prospecting operations or mining operations, as the case may be, possessed by the applicant ;
- (b) the financial resources of the applicant ;
- (c) the nature and quality of the technical staff employed or to be employed by the applicant ;
- (d) such other matters as may be prescribed.

(4) Notwithstanding anything contained in sub-section (2) but subject to the provisions of sub-section (1), the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.

## 12. Registers of prospecting licences and mining leases.

(1) The State Government shall cause to be maintained in the prescribed form—

- (a) a register of applications for prospecting licences ;
- (b) a register of prospecting licensees ;
- (c) a register of applications for mining leases ; and
- (d) a register of mining lessees ;

in each of which shall be entered such particulars as may be prescribed.

(2) Every such register shall be open to inspection by any person on payment of such fee as the State Government may fix.

### *Rules for regulating the grant of prospecting licences and mining leases*

## 13. Power of Central Government to make rules in respect of minerals.

(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the person by whom, and the manner in which, applications for prospecting licences or mining leases in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor;
- (b) the time within which, and the form in which, acknowledgment of the receipt of any such application may be sent;
- (c) the matters which may be considered where applications in respect of the same land are received on the same day;
- (d) the persons to whom certificates of approval may be granted, the form of such certificates and the fees payable for the grant, or renewal thereof;
- (e) the authority by which prospecting licences or mining leases in respect of land in which the minerals vest in the Government may be granted;
- (f) the procedure for obtaining a prospecting licence or a mining lease in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such a licence or lease may be granted or renewed;
- (g) the terms on which, and the conditions subject to which, any other prospecting licence or mining lease may be granted or renewed;
- (h) the facilities to be afforded by holders of mining leases to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

- (i) the fixing and collection of dead rent, fines, fees or other charges and the collection of royalties in respect of—
  - (i) prospecting licences,
  - (ii) mining leases,
  - (iii) minerals mined, quarried, excavated or collected;
- (j) the manner in which rights of third parties may be protected (whether by payment of compensation or otherwise) in cases where any such party may be prejudicially affected by reason of any prospecting or mining operations;
- (k) the grouping of associated minerals for the purposes of section 6;
- (l) the manner in which, and the conditions subject to which, a prospecting licence or a mining lease may be transferred;
- (m) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passages for water for mining purposes on any land comprised in a mining lease;
- (n) the form of registers to be maintained under this Act;
- (o) the disposal or discharge of any tailings, slime or other waste products arising from any mining or metallurgical operations carried out in a mine;
- (p) the reports and statements to be submitted by holders of prospecting licences or owners of mines and the authority to which such reports and statements shall be submitted;
- (q) the period within which applications for revision of any order passed by a State Government or other authority in exercise of any power conferred by or under this Act, may be made and the manner in which such applications shall be disposed of; and
- (r) any other matter which is to be, or may be, prescribed under this Act.

#### **14. Sections 4 to 13 not to apply to minor minerals.**

The provisions of Ss. 4 to 13 (inclusive) shall not apply to prospecting licences and mining leases in respect of minor minerals.

#### **15. Power of State Governments to make rules in respect of minor minerals.**

(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of prospecting licences and mining leases in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

#### **16. Power to modify mining leases granted before 25th October, 1949.**

(1) All mining leases granted before the 25th day of October, 1949, shall, as soon as may be after the commencement of this Act, be brought into conformity with the provisions of this Act and the rules made under sections 13 and 18:

Provided that if the Central Government is of opinion that in the interests of mineral development it is expedient so to do, it may, for reasons to be recorded, permit any person to hold one or more such mining leases covering in any one State a total area in excess of that specified in clause (b) of section 6 or for a period exceeding that specified in sub-section (1) of section 8.

(2) The Central Government may, by notification in the Official Gazette,

make rules<sup>a</sup> for the purpose of giving effect to the provisions of sub-section (1) and in particular such rules shall provide—

- (a) for giving previous notice of the modification or alteration proposed to be made in any existing mining lease to the lessee and where the lessor is not the Central Government, also to the lessor and for affording him an opportunity of showing cause against the proposal;
- (b) for the payment of compensation to the lessee in respect of the reduction of any area covered by the existing mining lease; and
- (c) for the principles on which, the manner in which, and the authority by which, the said compensation shall be determined.

[a] For the Mining Leases (Modification of Terms) Rules, 1958, see S. R. O. 2062 dated 4-9-1958 published in Gaz. of Ind., 1958, Pt. II-sec. 3, page 1548, as amended by notification G. S. R. 437 dated 1-6-1958 issued under section 16 (2) of the present Act and published in Gaz. of Ind., 1958, Extra., Pt. II-sec. 3 (i), page 229/1.

### OBJECTS AND REASONS

"The Committee have given careful thought to this clause and feel that a mandatory provision should be made to the effect that all mining leases granted prior to the 25th day of October, 1949, shall be brought into conformity with the provisions of this Act and the rules framed thereunder.

"The Committee, however, feel that the

Central Government should have power in exceptional cases in the public interest to permit the holder of a mining lease to hold the lease for an area in excess of that specified in clause 6 (1) (b) or for a period exceeding that specified in clause 8 (1).

"The clause has been revised accordingly."  
—J. C. R.

*Special powers of Central Government to undertake prospecting or mining operations in certain cases*

### 17. Special powers of Central Government to undertake prospecting or mining operations in certain lands.

(1) The provisions of this section shall apply only in respect of land in which the minerals vest in the Government of a State.

(2) Notwithstanding anything contained in this Act, the Central Government, after consultation with the State Government, may undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease, and where it proposes to do so, it shall, by notification in the Official Gazette,—

- (a) specify the boundaries of such area;
- (b) state whether prospecting or mining operations will be carried out in the area; and
- (c) specify the mineral or minerals in respect of which such operations will be carried out.

(3) Where, in exercise of the powers conferred by sub-s. (2), the Central Government undertakes prospecting or mining operations in any area, the Central Government shall be liable to pay prospecting fee, royalty, surface rent or dead rent, as the case may be, at the same rate at which it would have been payable under this Act, if such prospecting or mining operations had been undertaken by a private person under a prospecting licence or mining lease.

(4) The Central Government, with a view to enabling it to exercise the powers conferred on it by sub-section (2) may, after consultation with the State Government, by notification in the official Gazette, declare that no prospecting licence, or mining lease shall be granted in respect of any land specified in the notification.

### *Development of minerals*

### 18. Mineral development.

(1) It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India, and for that purpose the Central Government may, by notification in the official Gazette, make such rules<sup>a</sup> as it thinks fit.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the opening of new mines and the regulation of mining operations in any area;
  - (b) the regulation of the excavation or collection of minerals from any mine;
  - (c) the measures to be taken by owners of mines for the purpose of beneficiation of ores, including the provision of suitable contrivances for such purpose;
  - (d) the development of mineral resources in any area;
  - (e) the notification of all new borings and shaft sinkings and the preservation of bore-hole records, and specimens of cores of all new bore-holes;
  - (f) the regulation of the arrangements for the storage of minerals and the stocks thereof that may be kept by any person;
  - (g) the submission of samples of minerals from any mine by the owner thereof and the manner in which and the authority to which such samples shall be submitted; and the taking of samples of any minerals from any mine by the State Government or any other authority specified by it in that behalf; and
  - (h) the submission by owners of mines of such special or periodical returns and reports as may be specified, and the form in which and the authority to which such returns and reports shall be submitted.
- (3) All rules made under this section shall be binding on the Government.

[a] For the Minerals Conservation and Development Rules, 1958 made in supersession of the Minerals Conservation and Development Rules, 1955, see G. S. R. 441 dated 1-6-1958 published in Gaz. of Ind., 1958, Extra., Pt. II-sec. 3 (i), page 229/2.

#### *Miscellaneous*

### **19. Prospecting licences and mining leases to be void if in contravention of Act.**

Any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.

*Explanation.*—Where a person has acquired more than one prospecting licence or mining lease in any State and the aggregate area covered by such licences or leases, as the case may be, exceeds the maximum area permissible under section 6, only that prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void.

### **20. Act and rules to apply to all renewals of prospecting licences and mining leases.**

The provisions of this Act and the rules made thereunder shall apply in relation to the renewal after the commencement of this Act of any prospecting licence or mining lease granted before such commencement as they apply in relation to the renewal of a prospecting licence or mining lease granted after such commencement.

### **21. Penalties.**

(1) Whoever contravenes the provisions of sub-section (1) of section 4 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during

which such contravention continues after conviction for the first such contravention.

## **22. Cognizance of offences.**

No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

## **23. Offences by companies.**

(1) If the person committing an offence under this Act or any rules made thereunder is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.* — For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals;
- (b) "director" in relation to a firm means a partner in the firm.

## **24. Power of entry and inspection.**

(1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorised by the Central Government in this behalf, by general or special order, may—

- (a) enter and inspect any mine;
- (b) survey and take measurements in any such mine;
- (c) weigh, measure or take measurements of the stocks of minerals lying at any mine;
- (d) examine any document, book, register or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record;
- (e) order the production of any such document, book, register, record, as is referred to in clause (d); and
- (f) examine any person having the control of, or connected with, any mine.

(2) Every person authorised by the Central Government under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and every person to whom an order or summons is issued by virtue of the powers conferred by clause (e) or clause (f) of that sub-section shall be legally bound to comply with such order or summons, as the case may be.

## **25. Recovery of certain sums as arrears of land revenue.**

Any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any prospecting licence or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.



**26. Delegation of powers.**

(1) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by—

- (a) such officer or authority subordinate to the Central Government; or
- (b) such State Government or such officer or authority subordinate to a State Government;

as may be specified in the notification.

(2) The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

(3) Any rules made by the Central Government under this Act may confer powers and impose duties or authorise the conferring of powers and imposition of duties upon any State Government or any officer or authority subordinate thereto.

**27. Protection of action taken in good faith.**

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

**28. Rules and notifications to be laid before Parliament and certain rules to be approved by Parliament.**

(1) All rules made and notifications issued by the Central Government under this Act shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made or issued and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

(2) Without prejudice to the generality of the rule-making power vested in the Central Government, no rules made with reference to clause (c) of subsection (2) of section 16 shall come into force until they have been approved, whether with or without modifications, by each House of Parliament.

**29. Existing rules to continue.**

All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948,<sup>a</sup> shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act.

[a] Now see the Oilfields (Regulation and Development) Act, 1948.

**30. Power of revision of Central Government.**

The Central Government may, of its own motion or on application made within the prescribed time by an aggrieved party, revise any order made by a State Government or other authority in exercise of the powers conferred on it by or under this Act.

**Section 29 — Note 1**

[1] The validity of R. 62 made under the old Act and the order of the State Government dated the 3rd January, 1951, under the old Act refusing to grant a certificate of approval to a Corporation cannot be challenged in view of the provision of S. 29 and S. 33 of the new Act which replaced the old Act. (1959) 35 Pat 1160 (1207).

**Section 30 — Note 1**

[1] The Central Government in reviewing an order of the State Government under R. 59 acts merely as an administrative authority and it is not bound to adopt any procedure analogous to judicial proceedings. Hence its decision does not become void and invalid because it did not give the parties any opportunity to put their case before it when making its order. 1959 Punj 54 (57, 58) [AIR V.]

**\*[30A. Special provisions relating to mining leases for coal granted before 25th October, 1949.]**

Notwithstanding anything contained in this Act, the provisions of sub-section (1) of section 9 and of sub-section (1) of section 16 shall not apply to or in relation to mining leases granted before the 25th day of October, 1949, in respect of coal, but the Central Government, if it is satisfied that it is expedient so to do, may, by notification in the Official Gazette, direct that all or any of the said provisions (including any rules made under sections 13 and 18) shall apply to or in relation to such leases subject to such exceptions and modifications, if any, as may be specified in that or in any subsequent notification.]

[a] *Inserted* and deemed always to have been inserted, by the Mines and Minerals (Regulation and Development) Amendment Act, 1958 (XV of 1958), S. 2.

**OBJECTS AND REASONS**

"The Mines and Minerals (Regulation and Development) Act, 1957, which replaces the Act of 1948, specifically extends the rate of royalty prescribed in the Second Schedule to mining leases granted before the 25th October, 1949, in respect of coal also and makes it obligatory for the other terms and conditions of such leases to be brought into conformity with the provisions of the Act and the rules made under sections 13 and 18. It is considered that these changes will have numerous undesirable consequences. The areas covered by these mining leases are principally in West Bengal and Bihar and they account for as much as 80 per cent. of the total coal production in the country. The royalties paid on this coal vary over a wide range but are generally much below the rate per ton prescribed in the

Second Schedule. A sudden and uniform increase of these royalties is likely to have an unsettling effect on the industry and may retard the programme of coal production under the Second Five Year Plan. The same adverse effect would be felt by a sudden modification of the other terms and conditions." This section accordingly exempts "mining leases for coal granted before the 25th October, 1949, from the operation of sub-section (1) of section 9 and sub-section (1) of section 16 of the Act, with powers to Government to extend these provisions to such leases at a future date, subject to such exceptions and modifications as may be considered necessary."

—S. O. R. Gaz. of Ind., 1958, Extra., Pt. II-sec. 2, page 507.

**31. Relaxation of rules in special cases.**

The Central Government may, if it is of opinion that in the interests of mineral development it is necessary so to do, by order in writing and for reasons to be recorded, authorise in any case the grant, renewal or transfer of any prospecting licence or mining lease, or the working of any mine for the purpose of searching for or winning any mineral, on terms and conditions different from those laid down in the rules made under section 13.

**32. Amendments to Act LIII of 1948.**

The Mines and Minerals (Regulation and Development) Act, 1948, shall be amended in the manner specified in the Third Schedule.

**33. Validation of certain acts and indemnity.**

All acts of executive authority done, proceedings taken and sentences passed under the Mines and Minerals (Regulation and Development) Act, 1948, with respect to the regulation of mines and the development of minerals during the period commencing on the 26th day of January, 1950, and ending with the date of commencement<sup>a</sup> of this Act by the Government or by any officer of the Government or by any other authority, in the belief or purported belief that the acts, proceedings or sentences were being done, taken or passed under the said

**Section 30 — Note 1 (contd.)**

C 16]. (The procedure laid down by Rr. 57 to 59 excludes the right of a petitioner for review to be heard in person as it implies that the State Government is not to be so heard.)

**Section 33 — Note 1**

[1] Section 33 does not refer to executive acts but to "acts of executive authority". The acts of executive authority need not be execu-

tive in character because in the context of modern administration an act of executive authority may be quasi-judicial or quasi-legislative and delegation of judicial or legislative powers to the executive administration is permissible within certain limits in the field of administrative law. Section 33 validates not purely executive acts but also quasi-judicial acts. ('59) 38 Pat 1160 (1207).

Act, shall be as valid and operative as if they had been done, taken or passed in accordance with law, and no suit or other legal proceeding shall be maintained or continued against any person whatsoever, on the ground that any such acts, proceedings or sentences were not done, taken or passed in accordance with law.

[a] That is 1st June 1958.

### THE FIRST SCHEDULE

(See sections 5 (2) (a), 7 (2) and 8 (2))

#### SPECIFIED MINERALS

- |   |   |
|---|---|
| 1. Apatite and phosphatic ores.   | 15. Pitchblende and other uranium ores.   |
| 2. Beryl.   | 16. Precious stones.  |
| 3. Chrome ore.  | 17. Rutile.   |
| 4. Coal and lignite.  | 18. Silver.   |
| 5. Columbite, samarskite and other minerals of the "rare earths" group. | 19. Sulphur and its ores.   |
| 6. Copper.  | 20. Tin.  |
| 7. Gold.  | 21. Tungsten ores.  |
| 8. Gypsum.  | 22. Uraniferous allanite, monazite and other thorium minerals.  |
| 9. Iron ore.  | 23. Uranium bearing tailings left over from ores after extraction of copper and gold, ilmenite and other titanium ores. |
| 10. Lead.   | 24. Vanadium ores.  |
| 11. Manganese ore.  | 25. Zinc.   |
| 12. Molybdenum.   | 26. Zircon.   |
| 13. Nickel ores.  |   |
| 14. Platinum and other precious metals and their ores.                  |   |

### THE SECOND SCHEDULE

(See section 9)

#### RATES OF ROYALTY

- |  |  |
|--|--|
| 1. Coal—   | Five per cent. of f.o.r. price subject to a minimum of fifty naye paise per ton. |
| 2. Mica—   | Either   |
| (a) Crude mica.  | One rupee per maund.   |
| (b) Trimmed mica, all qualities other than heavy stained, dense stained and spotted.                   | Three rupees per maund.  |
| (c) Trimmed mica other than that specified in item (b).  | One rupee and fifty naye paise per maund.  |
| (d) Waste and scrap mica.  | Twelve naye paise per maund.   |
|  | Or   |
| Six-and-a-quarter per cent. of the sale price of mica at the pit's mouth, at the option of the lessor. |  |
| 3. Gold, silver, platinum and other precious metals and their ores, copper, lead and zinc ores.        | Six-and-a-quarter per cent. of the sale price at the pit's mouth.                |

<b>4. Iron—</b>	
(a) Used for extraction of iron within the country.	Five per cent. of the sale price at the pit's mouth subject to a minimum of fifty naye paise per ton.
(b) Used for other purposes.	Five per cent. of the sale price at the pit's mouth subject to a minimum of one rupee per ton.
<b>5. Precious stones.</b>	Twenty per cent. of the sale price at the pit's mouth.
<i>Explanation.</i> —For the purpose of this item, “price” means the price of “raw, uncut stone”, that is to say, stone from which adhering rock, soil, and mud have been removed by washing or any other simple means, but which has not been subjected to any other process.	
<b>*[6. Manganese—</b>	
(a) Manganese dioxide.	Fifteen per cent. of the sale price at the pit's mouth subject to a minimum of three rupees per ton.
<b>Manganese ore—</b>	
(i) High grade (Forty-five per cent. Mn. and over.)	Seven-and-a-half per cent. of the sale price at the pit's mouth subject to a minimum of two rupees per ton.
(ii) Low grade (below Forty-five per cent. Mn.)	Five per cent. of the sale price at the pit's mouth subject to a minimum of one rupee per ton.)
<b>7. Chromite—</b>	
(a) Forty-five per cent. $\text{Cr}_2\text{O}_3$ and above.	Ten per cent. of the sale price at the pit's mouth subject to a minimum of two rupees and twenty-five naye paise per ton.
(b) Less than Forty-five per cent. $\text{Cr}_2\text{O}_3$ .	Seven-and-a-half per cent. of the sale price at the pit's mouth subject to a minimum of one rupee and twelve naye paise per ton.
<b>8. Limestone.</b>	Five per cent. of the sale price at the pit's mouth subject to a minimum of thirty-seven naye paise per ton.
<b>9. Dolomite.</b>	Five per cent. of the sale price at the pit's mouth subject to a minimum of twenty-five naye paise per ton.
<b>10. Graphite.</b>	Ten per cent. of the sale price at the pit's mouth.
<b>11. China Clay.</b>	Seven-and-a-half per cent. of the sale price at the pit's mouth.
<b>12. Kyanite.</b>	Ten per cent. of the sale price at the pit's mouth subject to a minimum of five rupees per ton.
<b>13. Gypsum.</b>	Twelve-and-a-half per cent. of the sale price at the pit's mouth subject to a minimum of one rupee per ton.
<b>14. All other minerals not herein-before specified.</b>	Five per cent. of the sale price at the pit's mouth.

[a] Substituted for the former item 6, by G. S. R. 191, D/- 15-2-1960 issued under tion 9 (S) and published in Gaz. of Ind., 1960, Pt. II-Sec. 3 (i), p. 301.

## THE THIRD SCHEDULE

(See section 32)

## AMENDMENTS TO THE MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1948

[NOTE. — The title of the Mines and Minerals (Regulation and Development) Act, 1948 is changed into the Oilfields (Regulation and Development) Act, 1948 and consequential amendments are made in sections 1, 3, 5, 6 and section 2 of that Act is omitted. As these amendments will be found incorporated in that Act they are not printed here.]

## [THE] MINES MATERNITY BENEFIT ACT, 1941

(Act XIX of 1941)

[The Act printed here is as on 31-8-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"Many Provinces have legislation providing for the payment of maternity benefits by employers to women workers employed in factories. This Bill provides, on the lines of the existing Provincial legislation covering factories, for prohibition from employment in mines of a woman worker during the four

weeks following the day on which she is delivered of a child, and for the payment to her of maternity benefit at annas eight per day up to four weeks of absence before delivery and four weeks after delivery."

— Gazette of India, 1941, Part V, page 139.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts, XVIII of 1943; X of 1945; III of 1951.
- Extended by Acts LIX of 1949; XXX of 1950.

## COGNATE ACTS AND PROVISIONS

- |   |  |
|---|--|
| 1. COAL MINES LABOUR WELFARE FUND ACT, XXXII OF 1947.             | 3. MICA MINER LABOUR WELFARE FUND ACT, XXII OF 1946. |
| 2. COAL MINES PROVIDENT FUND AND BONUS SCHEMES ACT, XLVI OF 1948. | 4. MINES ACT, XXXV OF 1952.                          |

[THE] MINES MATERNITY BENEFIT ACT, 1941  
(ACT XIX OF 1941)<sup>a</sup>

[26th November, 1941.]

*An Act to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them.*

WHEREAS it is expedient to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them;

It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1941, Pt. V, p. 139.

This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

### 1. Short title, extent and commencement.

(1) This Act may be called THE MINES MATERNITY BENEFIT ACT, 1941.

(2) It extends to the whole of India <sup>a</sup>[except the State of Jammu and Kashmir].

(3) It shall come into force on such <sup>b</sup>date as the Central Government may, by notification in the Official Gazette, appoint.

[a] *Substituted* for "except Part B States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [b] The Act came into force on 28-12-1942, see Gaz. of Ind., 1943 Pt. I, . 32.

### 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

(a) "child" includes a still-born child;

(b) "Chief Inspector", "Inspector", "employed", "mine" and "owner" have the meanings assigned, respectively, to these expressions in section 3 of the Indian Mines Act, 1923<sup>a</sup>;

(c) "manager" means the manager of the mine appointed in accordance with the provisions of the Indian Mines Act,<sup>a</sup> 1923;

(d) "maternity benefit" means the payment referred to in section 5;

(e) "prescribed" means prescribed by rules made under this Act.

[a] See now section 2 of the Mines Act, 1952 (XXXV of 1952).

### 3. Prohibition of employment of, and work by, women during certain period.

<sup>a</sup>[(1)] No owner or manager of a mine shall knowingly employ a woman and no woman shall engage in employment in any mine during the four weeks following the day on which she is delivered of a child.

<sup>b</sup>[(2) No owner or manager of a mine shall employ any woman below ground in the mine<sup>c</sup>—

(a) if he has reason to believe or if she has informed him that she is likely to be delivered of a child within ten weeks ;

(b) if she has to the knowledge of the management been delivered of a child within the preceding twenty-six weeks ;

(c) during the period of ten weeks following the twenty-six weeks referred to in clause (b)—

(i) for more than four hours in a day unless a *creche*<sup>d</sup> is provided at the mine ;

(ii) in any case, for more than four hours at any one time :

Provided that where the woman informs the management that the child of which she was delivered has died, the provisions of clause (c) shall not apply after the management has with due diligence verified the correctness of her statement.]

[a] Section 3 was renumbered as sub-section (1) thereof, by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 2 [16-4-1945]. [b] *Added, ibid.* [c] Employ-

ment of a woman at any time of the day or night in any part of a mine which is below the adjacent ground level is now prohibited by section 46 of the Mines Act, 1952 (XXXV of 1952). [d] See section 48 of the Factories Act, 1948 (LXIII of 1948).

#### 4. Right to obtain leave of absence in pregnancy and after delivery.

(1) If any woman employed in a mine who is pregnant gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within one month from the date of such notice, the manager shall permit her if she so desires to absent herself from work up to the day of her delivery and such absence shall be treated as a period of authorized absence on leave :

Provided that \* [except in the case of a woman employed below ground in the mine] the manager may, on undertaking to defray the cost of such examination, require the woman to be examined by a qualified medical practitioner or midwife, and, if the woman refuses to submit to such examination or is certified on such examination as not pregnant or not likely to be delivered of a child within one month he may refuse such permission.

<sup>b</sup>[(2) If any woman employed below ground in a mine gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within ten weeks from the date of such notice, the manager may, on undertaking to defray the cost of such examination, require the woman to be examined within three days by a qualified medical practitioner or midwife, and shall permit her if she so desires to absent herself from work in any capacity in the mine prior to the said examination and unless he obtains a certificate that the woman is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination, up to the day of her delivery, and such absence shall be treated as a period of authorized absence on leave.

(3) The examination referred to in the proviso to sub-section (1) or in sub-section (2), shall, if the woman so desires, be carried out by a woman.

(4) The absence of a woman in the period during which she is entitled to maternity benefit under this Act shall be treated as authorized absence on leave.]

[a] *Inserted* by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 3 [18.4.1945]. For the prohibition of a woman being employed to work below ground in a mine, see S. 46 of the Mines Act, 1952. [b] *Substituted* for the original sub-section (2), *ibid.*

*Note* :—Where the woman gives notice referred to in sub-section (1) and obtains permission to absent herself from work up to the date of her delivery, the manager must, either at once or within three days, pay to her maternity benefit four weeks in advance.

#### 5. Right to and liability for payment of maternity benefit.

\*[(1)] Every woman <sup>b</sup>[other than a woman to whom the provisions of sub-section (2) apply] employed in a mine who has been continuously employed in that mine or in mines belonging to the owner of that mine for a period of not less than six months preceding the date of her delivery shall, if she complies with the conditions imposed by this Act be entitled to receive, and the owner of the mine shall be liable to make to her, in accordance with the provisions of this Act, a payment at the rate of \* [twelve annas] a day for every day <sup>d</sup>\* \* \* during the four weeks immediately preceding and including the day of her delivery and for each day of the four weeks following her delivery:

\*[Provided that no such payment shall be made for any day on which she attends work and receives payment therefor during the four weeks preceding her delivery.]

*Explanation*.—Periods of casual absence as defined by rules made under section 15 or authorized absence on account of illness or leave shall count as employment in determining whether employment has been continuous.

<sup>1</sup>[(2) Every woman who has worked below ground in a mine or mines of the

same owner for not less than ninety days in all during a period not exceeding six months immediately preceding the date on which clause (a) of sub-section (2) of section 3 becomes applicable to her case shall, if she complies with the other conditions imposed by this Act, be entitled to receive, and the owner of the mine shall be liable to make to her, in accordance with the provisions of this Act, a payment at the rate of six rupees a week for the ten weeks immediately preceding her delivery and for the six weeks following her delivery.]

[a] Section 5 was re-numbered as sub-section (1) thereof by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 4. [16-4-1945]. [b] *Inserted* *ibid.* [c] *Substituted* for "eight annas", *ibid.* [d] The words "on which she is absent from work owing to her confinement" were omitted, *ibid.*, 1945 (XVIII of 1945), S. 2. [13-8-1945]. [e] *Added*, *ibid.* [f] *Added* by Act X of 1945, S. 4.

## 6. Payment of bonus.

(1) The Central Government may by rules made under section 15 provide that a woman entitled to maternity benefit under this Act shall, if at the time of her delivery she utilized the services of a qualified midwife or other trained person, receive in addition to the maternity benefit due to her a bonus not exceeding in amount three rupees :

Provided that she shall not receive such bonus if at the place chosen by her for her confinement she would have been entitled free of charge to the services of a qualified midwife or other trained person provided by the owner of the mine.

(2) Such rules may further provide for the determination by the State Government of the amount of the bonus, and of the qualifications which shall be possessed by qualified midwives and other trained persons for the purposes of this section.

*Note.*—The section enables the Central Government to provide, by rules, for payment of bonus in addition to the maternity benefits under the Act.

## 7. Notice of delivery to be given to manager.

A woman entitled to maternity benefit under this Act, unless she has given the notice referred to in sub-section (1) <sup>a</sup>or sub-section (2), as the case may be, of section 4, shall on being delivered of a child give notice of her delivery in the prescribed manner to the manager before the expiry of seven days from the date of her delivery, and shall before the expiry of six months from such date furnish proof of the prescribed nature to the manager both of her delivery and of the date of her delivery :

Provided that a woman giving notice under section 4 or this section may therein nominate a person for the purposes of sub-section (2) of section 9.

[a] *Inserted* by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 5. [16-4-1945].

## 8. Payment of maternity benefit.

(1) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (1) of section 4 and has obtained permission to absent herself from work up to the date of her delivery, the manager shall either at once or within three days pay to her maternity benefit for four weeks in advance.

<sup>a</sup>[(1A) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (2) of section 4, the manager shall within three days pay to her maternity benefit for ten weeks in advance, unless, within the said three days as a result of the examination referred to in that sub-section, he obtains a certificate that she is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination.]

(2) A woman entitled to maternity benefit who has been delivered of a child shall, on furnishing the proof referred to in section 7,—

(a) if she has received an advance payment under sub-section (1) <sup>a</sup>or sub-



section (14)], be paid the balance of the maternity benefit due to her at the end of the fourth week from the date of her delivery or within three days of the furnishing of proof, whichever date is later ;

(b) if she has received no such advance payment,—

(i) if the proof is furnished before the end of the fourth week from the date of delivery, be paid at once or within three days so much of the maternity benefit as is then due to her, and be paid the balance at the end of the said fourth week.

(ii) if the proof is furnished after the end of the fourth week from the date of delivery, be paid at once or within three days the whole amount of the maternity benefit due to her.

[a] *Inserted*, by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 6, [16-4-1945].

## **9. Disposal of maternity benefit in case of death of women entitled to receive it.**

(1) If a woman entitled to maternity benefit who has received an advance under sub-section (1) \* [or sub-section (14)] of section 8 dies before being delivered of the child, the advance shall not be recoverable.

(2) If a woman entitled to maternity benefit having been delivered of a child dies before payment of the maternity benefit, or, where an advance under sub-section (1) \* [or sub-section (14)] of section 8 has been made, of the balance of the maternity benefit due to her is made, the amount due to her up to the date of her death shall, on the prescribed proof of the birth and date of the birth of the child and of the death and date of death of the woman being furnished at any time before the expiry of six months from the date of delivery, be paid if the child is living to the person who undertakes the care of the child, and if the child is not living to the person nominated by her under the proviso to section 7 or if she has made no such nomination to the legal representative of the deceased woman.

[a] *Inserted* by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 7 [16-4-1945].

## **10. Prohibition of dismissal during or on account of absence from work owing to confinement.**

(1) When a woman absents herself from work in accordance with \* [sub-section (1) of section 3 or in circumstances under which in accordance with this Act the absence is to be treated as authorized absence on leave], it shall be unlawful for the manager to dismiss her during or on account of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence.

(2) The dismissal of a woman at any time within six months before she is delivered of a child, if the woman but for such dismissal would have been entitled to maternity benefit under this Act, shall not have the effect of depriving her of that maternity benefit if the Chief Inspector is satisfied that her dismissal was without sufficient cause.

[a] *Substituted* for "section 3, or has obtained permission to absent herself in accordance with section 4", by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 8 [16-4-1945].

## **11. Power of Chief Inspector or Inspector to direct payments to be made.**

(1) Any woman claiming that maternity benefit to which she is entitled under this Act and any person claiming that a payment due under sub-section (2) of section 9 is improperly withheld may make a complaint to the Chief Inspector or any Inspector \* [or any other officer authorized in this behalf by the Central Government].

(2) On receipt of such complaint or on his own motion without any such complaint being made, the Chief Inspector or Inspector \* [or other officer] may

make inquiry or cause an inquiry to be made, and if satisfied that a payment has been wrongfully withheld may direct the payment to be made in accordance with his orders.

[a] *Inserted* by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 9 [16-4-1945].

## 12. Penalty for contravention of Act by a woman.

Any woman who does any work for which she receives payment in cash or kind after she has been permitted under sub-section (1) of section 4 to absent herself from work, or who engages in employment in any mine in contravention of \*[sub-section (1) of section 3], shall be punishable with fine which may extend to ten rupees, and, if she is entitled to maternity benefit under this Act shall forfeit her right to any maternity benefit not already paid to her.

[a] *Substituted* for "section 3" by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 10 [16-4-1945].

## 13. Penalty for contravention of Act by owner or manager.

(1) Any owner or manager of a mine, who contravenes any provision of this Act for which no express penalty is provided, shall be punishable with fine which may extend to five hundred rupees.

(2) The Court imposing the fine may, if the contravention has resulted in depriving a woman of any maternity benefit due to her, order the whole or any part of the fine when paid to be applied in payment of compensation to the woman for any loss caused to her by the contravention of the provision on account of which the fine has been imposed, and an Appellate Court or the High Court in exercise of its powers of revision may also make such order.

## 14. Cognizance of cases.

(1) No prosecution under this Act shall be instituted except by or with the sanction of the Chief Inspector \*[or of an officer authorized in this behalf by the Central Government].

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act or any rule made thereunder.

(3) No Court shall take cognizance of an offence punishable under this Act or any rule made thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed :

Provided that in computing the said period of six months any time spent in obtaining the sanction <sup>b</sup>[\* \* \*] required by sub-section (1) shall be excluded.

[a] *Inserted* by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 11 [16-4-1945]. [b] The words "of the Chief Inspector" were omitted, *ibid*.

## 15. Power of Central Government to make rules.

(1) The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make <sup>a</sup>rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) require the maintenance of registers and records for the purposes of this Act and prescribe the form thereof;
- (b) prescribe the form of the notices referred to in section 4 and section 7, and require mines to supply copies thereof to women workers;
- (c) regulate the examination of women <sup>b</sup>[referred to in] section 4, and the grant of the certificates therein referred to;
- (d) prescribe the nature of and the method of furnishing the proof referred to in section 7, section 8 and section 9;
- (e) regulate the manner of applying for and paying maternity benefit;
- (f) assign duties to, and regulate the powers of, the Chief Inspector and Inspectors. <sup>c</sup>[and the officers authorized by the Central Government referred

to in section 11 and sub-section (1) of section 14], for the purposes of this Act.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

[a] For the Mines Maternity Benefit Rules, 1943, see Gaz. of Ind., 1943, Pt. I, Sec. 1, p. 91.

[b] Substituted for "under the proviso to sub-section (1) of", by the Mines Maternity Benefit (Amendment) Act, 1945 (X of 1945), S. 12 [16-4-1945]. [c] Inserted, *ibid.*

## 16. Abstract of this Act and the rules made thereunder to be exhibited in mines.

(1) The manager of every mine in which women are employed shall cause an abstract in the local Indian language of the provisions of this Act and of the rules made thereunder to be exhibited in the mine in such manner that they may come to the notice of every woman employed in the mine.

(2) For any contravention of the provisions of this section the manager shall be punishable with fine which may extend to one hundred rupees.

## 17. Power of Central Government to exempt mines from operation of Act.

The Central Government may, by notification in the Official Gazette, exempt any mine or class of mines from the operation of this Act.

## 18. Act binding on Government.

The provisions of this Act shall be binding on the Government.

# [THE] MINIMUM WAGES ACT, 1948

(ACT XI of 1948)

[The Act printed here is as on 31-8-1960.]

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31. Validation of fixation of certain minimum rates of wages.

**THE SCHEDULE.****STATEMENT OF OBJECTS AND REASONS**

"The justification for statutory fixation of minimum wages is obvious. Such provisions which exist in more advanced countries are even more necessary in India, where workers' organizations are yet poorly developed and the workers' bargaining power is consequently poor.

The Bill provides for fixation, by the Provincial Governments, of minimum wages for employments covered by the Schedule to the Bill. The items in the Schedule are those where sweated labour is most prevalent or where there is a big chance of exploitation of labour. After a time, when some experience is gained, more categories of employments can be added and the Bill provides for additions to the Schedule. A higher period is allowed for fixation of minimum wages for Agricultural labour as administrative difficulties in this case will be more than in the other employments covered by the Schedule. The Bill also provides for periodical revision of the wages fixed.

Provision has been made for appointment of Advisory Committees and Advisory Boards, the latter for co-ordination of work of the Advisory Committees. The Committees and

the Boards will have equal representation of employers and workmen. Except on initial fixation of minimum wages, consultation with the Advisory Committees will be obligatory on all occasions of revision.

In cases where an employer pays less than the minimum wages fixed by Provincial Governments, a summary procedure has been provided for recovery of the balance with penalty and for subsequent prosecution of the offending party.

It is not ordinarily proposed to make any exemptions in regard to employees of undertakings belonging to the Central Government except that difficulties might arise where the sphere of duty of such an employee covers more than one Province and when the rates of minimum wages fixed by the different Provinces may be different. For this purpose, a provision has been included that the minimum wages fixed by a Provincial Government will not apply to employees in any undertaking owned by the Central Government or employees of a Federal railway, except with the consent of the Central Government."

—Gazette of India, 1946, Part V, p. 331.

**THE MINIMUM WAGES (AMENDMENT) ACT, 1957 (XXX of 1957)****STATEMENT OF OBJECTS AND REASONS**

"Section 3 (1) (a) of the Minimum Wages Act, 1948, required minimum wages to be fixed before the 31st December 1954. It has not been possible to fix rates of wages before that date in respect of certain employments, particularly employments in agriculture. It has, therefore, become necessary to extend the time limit for fixing minimum rates of wages in respect of such employments. It is proposed that the time limit be extended up to the 31st December, 1959.

2. Under section 3 (1) (b) of the Act, minimum rates of wages fixed should be reviewed and revised, if necessary, at intervals not exceeding five years. In some cases it has not been possible to review the minimum rates of wages within that period. The Act, as it stands, does not authorise review or revision after the expiry of five years. The proposed amendment to the section removes this difficulty.

3. Opportunity has been taken to make certain other amendments which are considered necessary in the light of the working of the Act. The amendments either seek to clarify points of doubt or to remove difficulties experienced in the working of the Act. The objects of the more important of these amendments

- (a) to secure uniformity in the procedure followed for fixation and revision of wages (section 5) ;
- (b) to enable a Claims Authority to entertain claims not only in respect of payment of wages which are less than the minimum wages but also in respect of payment of remuneration for days of rest and payment of overtime wages (section 20) ;
- (c) to provide for the application of the Payment of Wages Act, 1936, to claims relating to delay in payment of wages or non-payment of wages (section 22F) ;
- (d) to specify the persons liable to punishment in the case of offences by companies (section 22C) and to make a general provision for punishment of offences for which no penalty is provided in the Act (section 22A) ; and
- (e) to ensure prompt disbursement of wages to labour employed by Government contractors by exempting from attachment certain assets of such contractors in the hands of the Government (section 22E)."

—Gaz. of Ind., 1956, Extra.,  
Pt. II-S. 2, page 1018.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts LVI of 1950 ; III of 1951 ; XVI of 1951 ; XXVI of 1954 ; XXX of 1957.
- Amended in Bombay by Bom. Act VIII of 1954.
- Amended in Kerala by Ker. Act XVIII of 1960.
- Amended in Uttar Pradesh by U. P. Act XX of 1960.
- Adapted by A. L. O., 1950.
- Extended by Acts LIX of 1949 ; XXI of 1950.
- Extended in Bombay by Bom. Act IV of 1950.
- Extended in Punjab by Punj. Act V of 1950.

## COGNATE ACTS AND PROVISIONS

1. INDUSTRIAL DISPUTES ACT, XIV OF 1947, S. 25J (1), PROVISOR.
2. PAYMENT OF WAGES ACT, IV OF 1936.

## [THE] MINIMUM WAGES ACT, 1948

(ACT XI of 1948)<sup>a</sup>

[15th March, 1948.]

*An Act to provide for fixing minimum rates of wages in certain employments.*

WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons *see* Gaz. of Ind., 1948, Pt. V, p. 331; for Select Committee Report *see* Gaz. of Ind., 1948, Pt. V, p. 55.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States merged in—

The State of Bombay : *See* Bom. Act IV of 1950, S. 3 [30-3-1950].

The State of Punjab : *See* Punj. Act V of 1950, S. 3 [15-4-1950].

The Act is applied to—

- (a) all the Excluded and Partially Excluded Areas in Assam — *see* Assam Gaz., 1949, Pt. II, pp. 390 and 793;
- (b) Chota Nagpur Division and Santal Parganas District — *see* Bihar Gaz., 1948, Pt. II, p. 878;
- (c) partially excluded areas in Bombay Presidency—*see* Bom. Gaz., 1948, Pt. IV-A, p. 399;
- (d) Darjeeling District—*see* Cal. Gaz., 1948, Pt. I, p. 722;
- (e) partially excluded areas in C. P. and Berar subject to certain modifications—*see* C. P. and Berar Gaz., 1948, pt. I, p. 675;
- (f) partially excluded areas in the Province of Orissa — *see* Orissa Gaz., 1948, Pt. III, p. 740;
- (g) the excluded areas of Lahaul and Spiti—*see* E. P. Gaz., 1948, Pt. I, p. 955;
- (h) the merged State of Banaras, Tehri-Garhwal and Rampur — *see* U. P. Gaz., 1951, Pt. I-A, p. 153;
- (i) the Jaunsar-Bawar Pargana of Dehra Dun District and the portion of Mirzapur District, south of the Kaimur Range—*see* U. P. Gaz., 1949, Pt. I, p. 126.

## 1. Short title and extent.

(1) This Act may be called THE MINIMUM WAGES ACT, 1948.

(2) It extends to the whole of India <sup>a</sup>[except the State of Jammu and Kashmir.]

[a] Substituted for "except Part B States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

## Preamble — Note 1

[1] The provisions of the Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them. 1960 S C 1068 (1071) [AIR V 47 C 192]. (AIR 1958 Bom 332, *affirmed*.)

[2] The legislative policy which is apparent on the face of the enactment itself is the statu-

tory fixation of minimum wages with a view to obviate the chances of exploitation of labour. The legislature intended to apply this Act not to all industries but to those industries only where by reason of the unorganized labour or want of proper arrangements for effective regulation of wages or other causes the wages of labourers are very low. 1955 S C 25 (32) [(S) A I R V 42 C 7] : 1955 S C R 735. (In view of this pronouncement the observations

## 2. Interpretation.

In this Act, unless there is anything repugnant in the subject or context,—

(a) “adult”, “adolescent” and “child” have the meanings respectively assigned to them in section 2 of the “[Factories Act, 1948];

[a] *Substituted* for “Factories Act, 1934” by the Minimum Wages (Amendment) Act, 1954 (XXVI of 1954), S. 2 [20-5-1954].

(b) “appropriate Government” means,—

(i) in relation to any scheduled employment carried on by or under the authority of the “[Central Government or a railway administration], or in relation to a mine, oilfield or major port, or any corporation established by [a Central Act], the Central Government, and

(ii) in relation to any other scheduled employment, the “[State Government];

[a] *Substituted* for “Central Government, by a railway administration” by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 2 [17-9-1957]. [b] *Substituted* for “an Act of the Central Legislature”, by A. L. O., 1950.

(c) “competent authority” means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

(d) “cost of living index number”, in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment;

(e) “employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which

### Preamble — Note 1 (contd.)

of the judicial commissioner in the judgment under appeal (AIR 1953 Ajmer 65) that he did not agree with the contention that the intention of the legislature was that the Act should apply only to industries in which the labour was not organized are not correct.)

[3] The restrictions imposed by the Act, though they interfere to some extent with the freedom of trade or business guaranteed under Art. 19 (1) (g) of the Constitution, being reasonable and imposed in the interest of the general public are protected by the terms of Cl. (6) of Art. 19. 1955 S C 33 (35, 36) [(S) AIR V 42 C 8] : 1955 S C R 752. (Hence the material provisions of the Act are not illegal and ultra vires.)

[4] The Minimum Wages Act was not intended so extant to repeal the Industrial Disputes Act of 1947 and to take its place as a substitute. 1955 Mad 45 (48) [(S) A I R V 42 C 10] : ILR (1954) Mad 1033 (DB).

### Section 2 (b) — Note 1

[1] The Central Government is the appropriate government under cl. (b) in the case of work done in pursuance of and under the authority derived from a building contract entered into with that government. 1959 Madh Pra 298 (301) [A I R V 46 C 101] : 1959 Cri L Jour 990. (Hence an inspector appointed by that Government is competent to file a complaint under the Act.)

[2] Where an order issued by the Governor General under S. 94 (3) of the Government of India Act of 1935 investing the Chief Commissioner of a Province to function as the appropriate Government for the purpose of this Act had been adapted by the President of India under Art. 372 (2) of the Constitution it was held that the Chief Commissioner became competent, even after the Constitution, to function as the appropriate Government and hence a delegation of authority by the President under Art. 239 of the Constitution was unnecessary. 1955 S C 25 (31) [(S) A I R V 42 C 7] : 1955 S C R 735.

### Section 2 (e) — Note 1

[1] Where the owner was not working his quarries himself but was giving them on contract basis to contractors and the contractors employed the workmen to operate the quarries it is the contractors and not the owner who could be said to be the ‘employer’ within the meaning of cl. (e). (‘59) 1959-1 Lab L J 558 (557) (Andh Pra).

[2] Where minimum wages have been fixed not generally for persons employed in the manufacture of bidis but only for the bidi makers a person employing workers in his establishment, where bidis made by contractors only are received, paid for “sorted out and packed for market” cannot be considered to be an ‘employer’ within the meaning of

minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,—

- (i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under "[clause (f) of sub-section (1) of section 7 of the Factories Act, 1915], as manager of the factory ;
- (ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department ;
- (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority ;
- (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages ;

[a] Substituted for "clause (e) of sub-section (1) of section 9 of the Factories Act, 1934", by the Minimum Wages (Amendment) Act, 1954 (XXVI of 1954), S. 2 [20.5.1954].

- (f) "prescribed" means prescribed by rules made under this Act ;
- (g) "scheduled employment" means an employment specified in the Schedule, or any process or branch of work forming part of such employment ;
- (h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment "[and includes house rent allowance] but does not include—

(i) the value of—

- (a) any house-accommodation, supply of light, water, medical attendance, or
- (b) any other amenity or any service excluded by general or special order of the appropriate Government ;
- (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance ;
- (iii) any travelling allowance or the value of any travelling concession ;

#### Section 2 (e) — Note 1 (contd.)

cl. (e). 1960 Madh Pra 174 (175) [A I R V 47 C 82] : 1960 Cri L Jour 832.

#### Section 2 (g) — Note 1

[1] The employees working in an establishment where Bidis are not actually made but Bidis made by contractors are received, sorted out, paid for, baked and packed for the market, must be regarded as employed in a 'scheduled employment' namely manufacture of Bidis. 1960 Madh Pra 174 (174) [AIR V 47 C 82] : 1960 Cri L Jour 832.

#### Section 2 (h) — Note 1

[1] Where it is clear from the award made

in an industrial dispute, that the bonus paid under it is intended to be an addition to the actual wages paid and not as an ex gratia payment, it becomes part of the 'wages.' 1959 Mys 96 (98) [A I R V 46 C 35] : ILR (1958) Mys 132.

[2] 'Batta' payable to persons to cover a portion of out-of-station expenses comes under S. 2 (h) (iv) of the Act and is excluded from 'wages' since it does not form a component part of the minimum rate of wages. 1955 Trav-Co 97 (102) [(S) A I R V 42 C 37] (DB). (Hence inclusion of the head 'batta' by the State in the notification issued under S. 5 Cl. (2) of the Act is ultra vires their powers and void.)

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or

(v) any gratuity payable on discharge ;

[a] Inserted by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 2 [17-9-1957].

- (i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed ; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person ; and also includes an employee declared to be an employee by the appropriate Government ; but does not include any member of the Armed Forces of the <sup>a</sup>[Union].

### 3. Fixing of minimum rates of wages.

<sup>a</sup>[(1) The appropriate Government shall, in the manner hereinafter provided,—

(a) fix the minimum rates of wages payable to employees employed—

(i) in an employment specified in Part I of the Schedule at the commencement of this Act, before the 31st day of December, <sup>b</sup>[1959];

(ii) in an employment specified in Part II of the Schedule at the commencement of this Act, before the 31st day of December, <sup>b</sup>[1959] ;

Provided that the appropriate Government may, instead of fixing minimum rates of wages under this sub-clause for the whole State, fix

#### Section 2 (i) — Note 1

[1] The word 'employee' defined in S. 2 (i) of the Act does not include past employees. ('59) ILR (1959) Mad 623 (629). (Hence summary remedy provided by S. 20 of the Act cannot be availed by past employees.)

[2] An out-worker preparing goods at his own house and supplying them to the employer has to be treated as an employee for the purposes of this Act. 1960 Madh Pra 181 (182) [AIR V 47 C 88] : 1960 Cri L Jour 915.

[3] A compounder working in a tea plantation is a person holding an employment within the meaning of the expression 'scheduled employment' occurring in the definition of the word 'employee' in S. 2 (i) of the Act. 1960 Assam 22 (25) [A I R V 47 C 6] (DB).

fix the minimum wages either for a State as a whole or for the locality, they would be under no legal liability or legal duty to fix minimum wage for each locality and the Government would not act in excess of its jurisdiction in deciding to fix the minimum wages for an industry for the State as a whole. ('59) 1959-2 Mad L Jour 132 (134). (Hence the fact that the quantum of the unit appears to be less in one locality than in other localities cannot amount to a denial of equal protection of laws within the meaning of Art. 14 of the Constitution.)

[3] Section 3, sub-s. (3), cl. (a) sub-cl. (iv) is not a discriminatory law. Upon a proper examination of the scheme of the Act it is clear that under the Act no scope is left for the State Government to make arbitrary discrimination between different localities. 1960 Bom 299 (304) [AIR V 47 C 88] : I L R (1959) Bom 1175 (DB).

[4] Section 3 of the Act does not make it obligatory to prescribe a time limit for fixing the minimum rates of wages in respect of new items of industries added to the schedule. Hence the fixation of the time limit by the State in the notification is a self imposed restriction and non-compliance with such a limitation cannot affect the validity of the notification published after the expiry of the said period so long as the notification is in accordance with the statutory requirements. 1957 Trav-Co 136(138) [AIR V 44 C 42] (DB).

#### Section 3 — Note 1

[1] The restrictions imposed by the Act upon the rights of the employer, though they interfere to some extent with the freedom of trade or business guaranteed under Art. 19 (1) (g) of the Constitution, are reasonable and being in the interest of the general public, are protected by the terms of cl. (6) of Art. 19. 1955 S C 33 (36) [(S) AIR V 42 C 8] : 1955 S C R 752. (Hence the provisions of the Act are not illegal and ultra vires.) \* 1958 Punj 425 (429) [AIR V 45 C 124].

[2] Though S. 3 permits the Government to



such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof; and

(iii) in an employment added to Part I or Part II of the Schedule by notification under section 27, before the expiry of one year from the date of the notification;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary.

[Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.]

(1A) Notwithstanding anything contained in sub-section (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, whether before or after the expiry of any time limit specified in sub-section (1), the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum

#### Section 3 — Note 1 (contd.)

[5] The Minimum Wages Act does not confer any power on the Government to insist that an employer employing workers on time rates should pay them on piece-rates. 1957 Ker 95 (95) [AIR V 44 C 53].

[6] A retrospective notification could not be issued, but the offending portion could be severed and effect given to the notification as from a subsequent date. 1953 Ajmer 65 (74) [AIR V 40 C 70].

[7] The fixation of minimum wages under the provisions of this Act does not in any way deprive the Government to refer a dispute to the Tribunal for adjudication under the provisions of Industrial Disputes Act. 1955 Mad 45 (48) [AIR V 42 C 10]; 11 L R (1954) Mad 1033 (DB). (The Act does not, 'eo extanti' repeal the Industrial Disputes Act 1947)\*1958 Ker 271 (272) [AIR V 45 C 96]; 11 L R (1958) Ker 747 (DB).

[8] The wages of an industrial worker must be such as would enable him to have not merely the means for bare subsistence of life but also for preservation of his efficiency as a worker and the minimum means which he must have, irrespective of the capacity of the industry or of his employer to pay, is to provide for measure of education, medical requirements and amenities. 1958 S C 578 (602) [AIR V 45 C 83]; 1959 S C R 12 \* (55) 1955 Lab A C 252 (257) (LATI).

[9] The Act does not cast a statutory obligation upon the State Government to fix or revise the rates of minimum wages strictly according to the cost of Living Index. Therefore, if the cost of living index in a particular locality is not strictly followed while fixing or revising the rates of minimum wages, there is no breach of a statutory duty committed. 1960 Bom 299 (302, 303) [AIR V 47 C 86]; 11 L R (1959) Bom 1175 (DB).

[10] Where the rates fixed in certain employments were not unreasonably high and were not higher than those found in other employments involving similar kinds of work, it cannot be held that the fixation of minimum rates without considering the paying capacity of small employments is invalid, and that employments should have been divided into different categories and their minimum rates should have been fixed separately for each category and that the fixation of uniform rates for all types is unjust and contrary to the intention of the legislature. 1958 Punj 425 (429) [AIR V 45 C 124].

[11] The fixation of minimum wages without affecting the existing tasks and hours of work of the labourers cannot warrant the management to deprive the labourers of extra wages for extra work which were hitherto being paid to them. The intention behind the fixation of the wages in such a case is to increase the basic wages. 1957 S C 227 (230) [(S) AIR V 44 C 31]; 1957 S C R 359\* 1958 Assam 1 (3) [AIR V 45 C 1]; 11 L R (1957) 9 Assam 334.

[12] Where the Government has fixed by notification under S. 3 read with S. 5 (2) of the Act, a minimum wage for an artisan working in a tea garden, the authority must confine itself to the Government Notification prescribing the minimum wages and it cannot extend its operation to the categories of labourers not named or mentioned therein. 1960 Assam 97 (99) [AIR V 47 C 27] (DB)\* 1960 Assam 123 (125, 126) [AIR V 47 C 34] (DB). (A carpenter although he is utilised for making tea chests and not for making chairs and tables is an artisan and hence is entitled to the benefit of minimum wages fixed. But a pharmacist designated as a dresser in the tea gardens cannot claim the benefit as an artisan.)

rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment within one year from the date on which it comes to such finding.]

(2) The appropriate Government may fix,—

- (a) a minimum rate of wages for time work (hereinafter referred to as “a minimum time rate”);
- (b) a minimum rate of wages for piece work (hereinafter referred to as “a minimum piece rate”);
- (c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as “a guaranteed time rate”);
- (d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as “overtime rate”).

(3) In fixing or revising minimum rates of wages under this section,—

(a) different minimum rates of wages may be fixed for—

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities;

<sup>d</sup>[(b) minimum rates of wages may be fixed by any one or more of the following wage periods, namely : —

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other larger wage period as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated :]

Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith.

[a] Substituted for sub-section (1), by the Minimum Wages (Amendment) Act, 1954 (XXVI of 1954), S. 3 [20-5-1954]. [b] Substituted for “1954”, *ibid* 1957 (XXX of 1957), S. 3 [17-9-1957]. [c] Proviso was added, *ibid*. [d] Substituted for the former clause (b) excluding the proviso, *ibid*.

### OBJECTS AND REASONS

**Amendment made by Act XXVI of 1954.**—“Under sub-cl. (a) of cl. (a) of sub-section (1) of section 3 of the Minimum Wages Act, 1948, the appropriate Governments were required to fix minimum rates of wages in the employments listed in Part I of the Schedule before the 31st March, 1952. Since the Act was extended to Part B States only with effect from 1st April, 1951, they had to complete all formalities required for fixing minimum wages within a period of less than one year with the result that it has not been possible for them to fix minimum wages in all cases. Moreover, the rates fixed after the 31st March, 1952, have no validity in law. In order to remove these legal difficulties and to give some more time to the States for enforcing the provisions of the Act it is proposed to extend the time-limit for fixing minimum rates of wages in employments

mentioned in Part I of the Schedule to the 31st December, 1953.

“It is also proposed to provide for the fixation of rates in respect of those scheduled employments for which no minimum rates of wages were initially fixed—In view of the Proviso to cl. (b) of sub-section (1) of section 3—within one year from the date on which the appropriate Government is satisfied that no less than one thousand employees are engaged in the employment in the whole State.

“Similarly, when new items are added under the powers conferred under section 27 of the Act, the amending Bill provides minimum wages in respect of those items should be fixed within one year from the date of issue of the notification under section 27 of the Act.”

—S. O. R., Gaz. of Ind., 1953, Extra., Pt. II—sec. 2, page 117.

*Amendment made by Act XXX of 1957* — See the first two paragraphs of the Statement of Objects and Reasons reproduced at the beginning of the text of this Act..

## STATE AMENDMENTS

## KERALA

Section 3, in its application to the fixation of minimum rates of wages in respect of employments specified in Part I and Part II of the Schedule to the Act, in relation to which the appropriate Government is the State Government, shall have effect in the State of Kerala subject to the amendments specified below—

In sub-section (1) of S. 3—

(i) in the opening words, for the words "The appropriate Government" substitute the words "The State Government";

(ii) in clause (a),—

(a) in sub-clauses (i) and (ii), for the figures, letters and words "31st day of December 1959" substitute the figures, letters and words "31st day of March, 1961, or such other date, not being later than the 31st day of March, 1962, as the State Government may, from time to time, fix by notification in the Gazette";

(b) after the existing Proviso insert the following further Proviso, namely :—

Provided further that where, in fixing the minimum rates of wages of any employment under sub-clause (i) or sub-clause (ii), any class of employees is left out, the State Government may, at any time, fix the minimum rates of wages payable to such class of employees.

*Explanation.*—For the purposes of this Proviso, the expression "employees left out" with reference to an employment shall include—

(i) employees employed in a particular locality in the employment, the minimum rates of wages payable to whom have not been fixed;

(ii) employees employed in any process or branch of work which was not in existence in the employment at the time when the minimum rates of wages were fixed".

— Kerala Act XVIII of 1960, S. 2 [22-9-1960].

## UTTAR PRADESH

In sub-clauses (i) and (ii) of clause (a) of sub-section (1) of S. 3, of the Minimum Wages Act, 1948, in its application to Uttar Pradesh, for the figures "1959" wherever occurring substitute the figures "1960".

— U. P. Act XX of 1960, S. 2 [w. r. e. f. 1-1-1960].

## 4. Minimum rate of wages.

(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of—

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or
- (ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorized; or
- (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

## Section 4 — Note 1

[1] The Government are entitled to revise the 'dearness allowance' under S. 4 (1) of the Act, and where they have done so and the employer fails to comply with the directions given in the notification he can be compelled to pay the employees concerned at the rates indicated in the notification. 1958 Assam 39 (43) [A I R V 45 C 14] : I L R (1956) 8 Assam 145 (DB).

[2] It is true that the Act makes no specific mention of the term 'dearness allowance', but it refers to an allowance paid on rise of cost of living. Where an inclusive rate has been fixed including a basic rate of wages and cost of living allowance, this is in accordance with law. Whether the rate is fixed under S. 4 (1)(ii) or S. 4 (1) (iii) the fixation of an all-inclusive

rate of minimum wages is valid. Under S. 4 (1) (ii) a direction of adjustment at certain intervals is not necessary. 1956 Punj 425 (428) [A I R V 45 C 124].

[3] The Government can take into its consideration the cash value of the concessions enjoyed by the workers in respect of supply of foodstuffs, essential commodities and other amenities only where it proceeds to fix the minimum wage under cl. (i) or cl. (ii) of S. 4 (1) and not when it fixes the wage under cl. (i). Hence where the wage is purported to have been fixed under cl. (i) the authority has no jurisdiction to order the employer to pay any sum of money in respect of these concessions. 1958 Assam 39 (42) [A I R V 45 C 14] : I L R (1956) 8 Assam 145 (DB).

[4] The Minimum Wages Committee in

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

**\*[5. Procedure for fixing and revising minimum wages.]**

(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either—

- (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or
- (b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue :

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also.]

[a] Substituted for S. 5, by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 4 [17-9-1957].

**Section 4 — Note 1 (contd.)**

fixing wage might have included in its calculation the cash compensation paid to the workmen against the cut in the food rations but still the Government may order the payment of such compensation in addition to the minimum wage fixed by the committee. Hence where the order of the Government is clear to that effect it would be unnecessary to consider what was at the back of the mind of the committee when they fixed the minimum wage. 1957 S C 208 (208, 211) [(S) A I R V 44 C 28].

[5] Though payment of "batta" may be a common feature it cannot be added to the pay as allowances and concessions in fixing a minimum wage under the Act. Batta in its ordinary sense is only an extra payment over and above the pay and not a part of it. 1955 Trav-Co 97 (101, 102) [(S) A I R V 42 C 37] (DB).

[6] Merely fixing a rate of living allowance varying with the living index number without at the same time specifying the manner of adjustment or the intervals at which the adjustment has to be made is not a sufficient compliance with the terms of S. 4 (1) of the Act. 1957 Andh-Pra 565 (567) [A I R V 44 C 191] (DB).

[7] The Government has no statutory authority under S. 4 to alter the contractual wage structure and fix different enforceable minima for the component parts of the wages payable to an employee. Hence when a minimum

rate of wages is prescribed as payable to an employee what he is entitled to get is wages, the totality thereof, at a rate not less than the minimum rate prescribed, the rate itself being unitary, whatever may be its component parts under the permissive provisions of S. 4 (1) of the Act. 1957 Mad 69 (73) [A I R V 44 C 24] (DB).

**Section 5 — Note 1**

[1] The Government's power to fix minimum wages is not in contravention of Art. 19 (1) (g) of the Constitution and is protected by Art. 19 (6). 1958 Punj 425 (429) [AIR V 45 C 124].

[2] The power conferred under S. 5 of the Act can be exercised only if the employment in question is specified in the Schedule. 1960 S C 1068 (1071) [AIR V 47 C 192].

[3] Where the provision of S. 5 (1) has not been followed at all, it is not open to the State Government to fix minimum wages, and any order fixing minimum rates of wages without following the provisions of S. 5 (1) is of no force and effect. 1957 Raj 35 (38) [AIR V 44 C 15] : ILR (1957) 7 Raj 74 (DB). (Committee not appointed according to requirements of S. 9—Government notification fixing minimum wage on its report is of no force and effect.)

[4] Procedural irregularities, such as ordering the extension of the time of the committee after the period originally fixed had already expired, do not vitiate the report submitted

**6. Advisory committees and sub-committees.** [*Omitted by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 5 [17.9.1957].*]

**7. Advisory Board.**

For the purpose of co-ordinating the work of <sup>a</sup>[committees and sub-committees, appointed under section 5] and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

[a] Substituted for "committees, sub-committees, advisory committees and advisory sub-committees appointed under sections 5 and 6" by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 6 [17.9.1957].

**8. Central Advisory Board.**

(1) For the purpose of advising the Central and <sup>a</sup>[State] Governments in the matters of the fixation and revision of minimum rates of wages and other

**Section 5 — Note 1 (contd.)**

by the committee. 1955 S C 25 (33) [(S) AIR V 42 C 7] : 1955 SCR 735.

[5] A notification under this section which fails to specify the date on which the proposals would be taken into consideration is not in consonance with sub-s. (1) (b). 1960 Ker 67 (68) [AIR V 47 C 25] : ILR (1959) Ker 941 (DB).

[6] Although the State Government has power to fix different minimum rates of wages for different scheduled employments as well as for the different classes of workers under the same scheduled employment it cannot direct by its notification the procedure to be adopted for deciding the particular category to which an employee belongs. 1958 Assam 12 (14) [AIR V 45 C 4] (DB).

[7] The inclusion of batta as a component part of the minimum rate of wages fixed renders the notification under this section void as being ultra vires the powers of the Government. 1955 Trav-Co 97 (102) [(S) AIR V 42 C 57] (DB).

[8] The right to make a representation under sub-s. (2) extends to the date which is fixed under sub-s. (1) (b) for the consideration of the proposals and that right cannot be confined to any anterior date. Hence a notification which states that the representations will be received only up to a particular date but the proposals would be considered at a later date is not a proper notice. 1960 Ker 67 (68) [AIR V 47 C 25] : ILR (1959) Ker 941 (DB).

[9] A retrospective notification under S. 5 (2) of the Act cannot be issued, but the offending portion can be severed and effect given to the notification as from the subsequent date. 1953 Ajmer 65 (74) [AIR V 40 C 70].

[10] The fixation of minimum rates of wages in respect of any scheduled employment by the appropriate Government is an administrative act which is final, and is not subject to judicial review on the question of the quantum of the wages fixed. If, however, the fixation by the Government is ultra vires their powers under the Act, it admits of being so declared and corrected by the Court under Art. 226 and/or Art. 227 of the Constitution. 1955 Trav-Co 97 (102) [(S) AIR V 42 C 371] (DB) \* 1960 Ker 67 (69) [AIR V 47 C 25] : ILR (1959) Ker 941 (DB) \* 1953 Ajmer 65 (67) [AIR V 40 C 70].

[11] A committee appointed under S. 5 of the

Act is an advisory body and hence the Government is not bound to accept any of its recommendations. 1955 S C 25 (33) [(S) AIR V 42 C 7] : 1955 SCR 735 \* 1958 Punj 425 (428, 429) [AIR V 45 C 124]. (The only object of this provision is to enable the Government to collect data required for fixing the minimum wage.)

[12] The authority cannot extend a notification fixing minimum wages to categories of labourers not named or mentioned therein. 1960 Assam 97 (99) [AIR V 47 C 27] (DB).

**Appointment of Wage Boards and regulation of their procedure.**

[13] A Wage Board relating to a particular trade or industry constituted of equal number of representatives of employers and employees with an independent member or members one of whom is appointed as a chairman is best calculated to arrive at a proper fixation of wages in that industry. 1958 S C 578 (607, 608) [AIR V 45 C 83] : 1959 SCR 12. (Case decided under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act of 1958.)

[14] The authority appointing a wage board should also lay down the principles for its guidance in wage fixation leaving at the same time a wide discretion to it in the fixation of wages. 1958 S C 578 (608) [AIR V 45 C 83] : 1959 SCR 12. (Case decided under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1958.)

[15] Wage Boards when constituted should be left to regulate their own procedure in such manner as they think fit. It is not necessary that any regulation should be made in regard to the procedure to be adopted by them in the conduct of their enquiry. 1958 S C 578 (608) [AIR V 45 C 83] : 1959 SCR 12. (Case decided under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act of 1958).

**Section 7 — Note 1**

[1] Section 7 of the Act does not require that the State Advisory Board should be constituted of the employers and employees belonging to a particular industry. The Board can consist of independent men belonging to different industries and different places. 1960 Bom 299 (305) [AIR V 47 C 88] : 1 L R (1959) Bom 1175 (DB).

matters under this Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

(2) The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

### 9. Composition of committees, etc.

Each of the committees, sub-committees, \*[\* \* \*] and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.

[a] The words "advisory committees, advisory sub-committees" were omitted by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 7 [17-9-1957].

### \*[10. Correction of errors.

(1) The appropriate Government may, at any time, by notification in the Official Gazette, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission.

(2) Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.]

[a] Substituted for S. 10, by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 8 [17-9-1957].

### 11. Wages in kind.

(1) Minimum wages payable under this Act shall be paid in cash.

(2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorize the payment of minimum wages either wholly or partly in kind.

#### Section 9 — Note 1

[1] It would be sufficient compliance with S. 9 if there is only one independent member and he is appointed chairman. 1953 Ajmer 65 (73) [AIR V 40 C 70].

[2] An advisory committee appointed by the Government without any representative of employer or employee is not a committee within the meaning of S. 9 of the Act and hence the notification, fixing the minimum rates of wages, issued on the advice of such a committee has no force or effect. 1957 Raj 35 (38) [AIR V 44 C 15] : ILR (1957) 7 Raj 74 (DB).

[3] It is not laid down anywhere in the Act or elsewhere that an official of the Government cannot be nominated as a member of the committee or that only a non-official can be considered to be an independent person. An 'independent' person in this section means a person who is neither an employer nor an employee in the employment for which minimum wages are to be fixed. 1958 Punj 425 (427) [AIR V 45 C 124]. (Appointment of Labour Commissioner as chairman is not invalid.)

[4] Any person, although he is not an em-

ployer himself, can be validly appointed as the employers' representative on the advisory committee, provided there is no objection to his appointment on that ground. 1958 Punj 425 (427) [AIR V 45 C 124]. (Editor though he does not own the press can be appointed.)

#### Section 10 — Note 1

[1] Per Vyas J., (Tambe J. contra) : The notification issued by Government under S. 10 (2) is not a piece of legislation of any kind, neither delegated legislation nor subordinate legislation nor conditional legislation. The legislature in enacting S. 10 (2) had no intention to assign to the appropriate Government anything more than a mere accessory power of taking an executive action of issuing notifications which were necessary to carry out the policy of the Act. 1960 Bom 299 (308) [AIR V 47 C 88] : ILR (1959) Bom 1175 (DB). (Article 13 (3) of the Constitution does not confer the character of an Act on the notification although under that provision it would have the same force as if it were the law of the land.)

(3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorize the provision of such supplies at concession rates.

(4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates authorized under sub-sections (2) and (3) shall be estimated in the prescribed manner.

## 12. Payment of minimum rates of wages.

(1) Where in respect of any scheduled employment a notification under section 5 \*[\* \*] is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.

(2) Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936.

[a] The words "or section 10" were omitted by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 9 [17-9-1957.]

## 13. Fixing hours for a normal working day, etc.

\*[(1)] In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may—

- (a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals ;
- (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest ;
- (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

<sup>b</sup>[(2) The provisions of sub-section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed :—

- (a) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented ;
- (b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned ;
- (c) employees whose employment is essentially intermittent ;
- (d) employees engaged in any work which for technical reasons has to be completed before the duty is over ;
- (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

### Section 12 — Note 1

[1] The Act provides for payment of minimum wages and so long as minimum wage is paid, the contractual wage structure is left unaffected and the component parts of the wages can still be regulated by contract between the employer and employee. 1957 Mad 69 (72) [AIR V 44 C 24] (DB). (Where the wages paid at the contract rate is higher than the minimum wages fixed the statutory right and obligation do not come into play.)

### Section 13 — Note 1

[1] Under S. 13 read with Rule 23 of the

U. P. Minimum Wages Rules (1952), every employee whether on daily wages or on monthly wages in a scheduled employment is entitled to a weekly holiday with wages. It makes no difference whether the actual holiday happens to be a Sunday or any other day. 1960 All 724 (726) [AIR V 47 C 204].

[2] It is not unlawful to require a person to work more than six days a week. The only thing is that if he is required to work on the seventh day also, he must be paid extra on the overtime scale. ('59) 1959-1 Lab L J 380 (389) (Mad.).



(3) For the purposes of cl. (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.]

[a] Section 13 was renumbered as sub-section (1) thereto, by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 10 [17-9-1957]. [b] Added, *ibid.*

#### 14. Overtime.

(1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

(2) Nothing in this Act shall prejudice the operation of the provisions of \* [section 59 of the Factories Act, 1948] in any case where those provisions are applicable.

[a] Substituted for "section 47 of the Factories Act, 1934", by the Minimum Wages (Amendment) Act, 1954 (XXVI of 1954), S. 4 [20-5-1954].

#### 15. Wages of worker who works for less than normal working day.

If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day :

Provided, however, that he shall not be entitled to receive wages for a full normal working day—

(i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and

(ii) in such other cases and circumstances as may be prescribed.

#### 16. Wages for two or more classes of work.

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

#### 17. Minimum time rate wages for piece work.

Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate.

#### 18. Maintenance of registers and records.

(1) Every employer shall maintain such registers and records giving such

##### Section 14 — Note 1

[1] This section read with R. 26 of the Rules framed by the Madras Government under S. 13 makes it plain that it is not illegal to require an employee to work overtime on

payment of extra wages. ('59) 1959-1 Lab L Jour 380 (389) (Mad).

##### Section 18 — Note 1

[1] An employer who employs for reward or wages out-workers to prepare goods at their own residence to supply them to him must



particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of out-workers, in such factory, workshop or place as may be used for giving out-work to them, notices in the prescribed form containing prescribed particulars.

(3) The appropriate Government may, by rules made under this Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

## 19. Inspectors.

(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their functions.

(2) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed –

(a) enter, at all reasonable hours, with such assistants (if any), being persons in the service of the <sup>a</sup>[Government] or any local or other public authority, as he thinks fit, any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein;

(c) require any person giving out-work and any out-workers, to give any information, which is in his power to give, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;

<sup>a</sup>[(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer; and]

(e) exercise such other powers as may be prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

<sup>b</sup>[(4) Any person required to produce any document or thing or to give any information by an Inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.]

[a] Substituted for clause (d) by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 11 [17-9-1957]. [b] Inserted, *ibid*.

## 20. Claims.

(1) The appropriate Government may, by notification in the Official Gazette, appoint <sup>a</sup>[any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any] other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages <sup>b</sup>[or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14,] to employees employed or paid in that area.

(2) <sup>c</sup>[Where an employee has any claim of the nature referred to in sub-section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3) :

Provided that every such application shall be presented within six months from the date on which the minimum wages <sup>d</sup>[or other amount] became payable :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

### Section 20 — Note 1

[1] The section does not provide the machinery for recovery of arrears of wages independently of any dispute arising from controversy as regards the minimum wage payable. Proceedings under this section can be commenced where a dispute exists as regards the rate of wages payable. 1960 All 541 (543) [AIR V 47 C 148] : 1960 Cri L Jour 1173.

[2] Appointment of the authority under S. 20 need not be by name. It may be by office. The words 'other officer with experience as a judge of a civil Court' in S. 20 only mean that the officer should be working or should have worked as a presiding judge of a civil Court. 1959 Tripura 16 (18) [AIR V 46 C 7].

[3] The inspector appointed under the law is under a duty to move the authority under the section to direct the defaulting employers to pay the difference between the wages fixed by the Government notification and that which had been actually paid by them. 1958 Assam 39 (40) [AIR V 45 C 14] : 1 L R (1958) 8 Assam 145 (DB).

[4] Application on behalf of the labourers by the legal practitioner duly authorised in writing by them need not be signed by all of them. 1959 Tripura 16 (18) [AIR V 46 C 7].

[5] An employee in his application under S. 20 has only to ask for the payment of the difference. It is not necessary for him to mention any specific amount as constituting such difference because it is for the authority to determine what that amount is. 1959 Tripura 16 (19) [AIR V 46 C 7].

[6] The cause of action under the Act is a continuous one; but the claim can be allowed for a period of six months only next before the date of application. 1960 Assam 22 (22) [AIR V 47 C 6].

[7] To give effect to an argument that the application for claim under the Minimum Wages Act, filed more than six months after the passing of the order by the Government fixing the minimum wages, is barred can never find acceptance, because it will have the effect of giving the order a life of six months only, and an argument that because the claim under the Act covered a period of more than six months next before the institution of the application the whole claim is barred by time, is also without force, as there is nothing in the Act or Rules to support it. 1959 Tripura 16 (18, 19) [AIR V 46 C 7].

[8] The date on which the wages become payable is determined from time to time by the contract between the parties while the rates at which such scales are payable are regulated by the Act and the notification issued thereunder. 1955 Mad 569 (570) [(S) AIR V 42 C 165].

[9] The proper procedure in a case, where an application is filed beyond the period of six months mentioned in S. 20 of the Act, should be not to admit the application, but to keep it pending, and to merely issue a notice upon the other side to show cause why the delay, if there was any good reason for it, should not be condoned. It is only after the application is admitted that the employer should be called upon to meet the case on merits. 1958 Assam 1 (4) [AIR V 45 C 1] : 1 L R (1957) 9 Assam 334 (DB).

[10] Where at the time of admitting the application of the employee, the tribunal was not called upon to satisfy itself nor did it satisfy itself then that there were sufficient causes to condone the delay in making the application as required by the second proviso

\*[(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct —

- (i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess ;
- (ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.]

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

#### Section 20 — Note 1 (contd.)

to S. 20 (2) of the Act but was satisfied only on the date of enquiry when the explanation for the delay was offered by the employee, and the employer himself did not raise the question that the application was belated and time barred till after the enquiry was over, and even at that stage, he did not seek to make it the subject matter of an issue and on the merits of the employee's claim it could not be said that anything other than substantial justice was done as between the parties by the tribunal granting the claim to the employee, it was held that the apparent defect in determining the question of fact on which depended the jurisdiction of the tribunal to investigate the claim for the period anterior to the six months referred to by the first proviso in S. 20 (2) of the Act was not such as to give the employer *ex debito justitiæ* the writ of certiorari to set aside the order granting the claim. 1955 Mad 569 (571) [(S) AIR V 42 C 165].

[11] A written application to the authority to condone the delay under the second proviso to sub-section (2) is not necessary. 1955 Mad 569 (571) [(S) AIR V 42 C 165].

[12] The authority appointed by the Government has to decide whether the employee is or is not entitled to any payment under the notification issued by the Government under S. 5 which has fixed the minimum wages. This power, therefore, implies power to determine whether a particular employee falls within the category of the employment whose rates have been fixed under the notification and this power cannot be taken away by the State Government. 1958 Assam 12 (14) [AIR V 45 C 4] (DB) \* 1960 Assam 97 (99) [AIR V 47 C 27] (DB).

[13] An authority appointed to hear and decide the claim under S. 20 of the Minimum Wages Act has jurisdiction to determine the

class to which the employee belongs. Where such authority fails to apply his mind at all to this question in spite of the employee's petition in that respect, the order passed under S. 20 is manifestly erroneous and liable to be set aside. 1960 Assam 123 (126) [AIR V 47 C 34] (DB).

[14] Where the unit for which minimum rate of wages has been prescribed is a day and the minimum wages which had been prescribed for each day is divided into two parts, one for the normal working day of nine hours, and the other for the overtime, the question whether an employee had worked overtime on any particular date enters into the determination of the question whether he has been paid the minimum rate of wages. Hence the authority constituted under the section is entitled to decide whether the applicant had worked overtime and if he had, to award him the higher rate as fixed under the Act or under any other law for the time being in force. 1956 Bom 95 (96, 97) [AIR V 43 C 25] (DB).

[15] Where the employer has failed to give weekly holidays to the employees working on monthly wage basis the authority can direct the employer to give the workers such holidays and not any additional remuneration for the work done during these holidays. 1960 All 724 (727, 728) [AIR V 47 C 204]. (But they can be allowed compensation under cl. (ii) of sub-s. (2) of the section.) \* (60) 1960-1 Mad L Jour 221 (223).

[16] Section 20 relates to past and not to future claims and hence there can be no direction under S. 20 (3) of the Act to pay minimum wages for a period subsequent to the presentation of a claim under S. 20 (2). 1957 Mad 69 (71) [AIR V 44 C 24] (DB).

[17] An employer not satisfied with an order made under this section cannot contest

(5) Any amount directed to be paid under this section may be recovered—

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

[a] Substituted for the words "any Commissioner for Workmen's Compensation or", by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 12 [17-9-1957]. [b] Inserted, *ibid.* [c] Substituted for the words "Where an employee is paid less than the minimum rates of wages fixed for his class of work under this Act", *ibid.* [d] Inserted, *ibid.* [e] Substituted for sub-section (3), *ibid.*

### STATE AMENDMENT

#### MAHARASHTRA

In its application to the State of Bombay, in sub-section (1), for the word "Magistrate" substitute "Judicial Magistrate".

— Bom. Acts VIII of 1954, S. 2 and Sch. [10-2-1954] and XCVII of 1958.

#### 21. Single application in respect of a number of employees.

(1) [Subject to such rules as may be prescribed, a single application] may be presented under section 20 on behalf or in respect of any number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of section 20 shall not exceed ten times the aggregate amount of such excess [or ten rupees per head, as the case may be.]

(2) The Authority may deal with any number of separate pending applications presented under section 20 in respect of employees in the scheduled employments in respect of which minimum rates of wages have been fixed, as a single application presented under sub-section (1) of this section and the provisions of that sub-section shall apply accordingly.

[a] Substituted for "A single application", by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 13 [17-9-1957]. [b] Added, *ibid.*

#### \*[22. Penalties for certain offences.

Any employer who—

(a) pays to any employee less than the minimum rates of wages fixed for that

#### Section 20 — Note 1 (contd.)

his liability to pay under the order by a suit. The proper remedy for him would be to move the High Court under Art. 226 of the Constitution against the order. 1957 Raj 35 (36) [AIR V 44 C 15] : ILR (1957) 7 Raj 74 (DB).

[18] Apart from the powers vested in the High Court under Arts. 226 and 227 of the Constitution, the order of the authority appointed under the Minimum Wages Act is subject to the revisional jurisdiction of the High Court under S. 115, Civil P. C. 1960 Assam 123 (125) [A I R V 47 C 34] (DB) \* 1958 Assam 1 (5) [AIR V 45 C 1] : ILR (1957) 9 Assam 334 (DB).

[19] The High Court cannot, at the instance of a rival concern exercise its powers under Art. 226 of the Constitution to issue a

writ of mandamus calling upon the Government to enforce the provisions of the Act by starting a prosecution against a concern which is not paying the minimum wages. The rival concern cannot maintain the petition under that Article on the ground that the enforcement of the provisions of the Act against it amounts to a denial of equality before law in violation of Art. 14 and of the right of free occupation and trade under Art. 19 (1) (g) of the Constitution. 1955 Nag 33 (35) [(S) AIR V 42 C 8] : I L R (1954) Nag 839 : 1955 Cri L Jour 262 (DB).

#### Section 22 — Note 1

[1] On the application of a rival employer the High Court will not issue a writ of mandamus calling upon the Government to en-

- employee's class of work, or less than the amount due to him under the provisions of this Act, or

(b) contravenes any rule or order made under S. 13, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under S. 20.

[a] Sections 22, 22A and 22B were substituted for former S. 22 and sections 22C to 22F were added by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 14 [17-9-1957].

## **22A. General provision for punishment of other offences.**

Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to five hundred rupees.

## **22B. Cognizance of offences.**

(1) No Court shall take cognizance of a complaint against any person for an offence—

(a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint;

(b) under clause (b) of section 22 or under section 22A, except on a complaint made by, or with the sanction of, an Inspector.

(2) No Court shall take cognizance of an offence—

(a) under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section;

(b) under section 22A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

## **22C. Offences by companies.**

(1) If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other

### **Section 22 — Note 1 (contd.)**

force the Act against another employer by prosecuting him for his failure to pay wages according to the rates fixed in the notification issued by the Government. 1955 Nag 33 (35) [(S) A I R V 42 C 8] : ILR (1954) Nag 839 : 1955 Cri L Jour 262 (DB).

ply with S. 18 in relation to the building operations carried on by him and in respect to those operations the Central Government is the appropriate Government then it is the Inspector who has been appointed by that Government under S. 19 that can file a complaint against the employer. 1959 Madh Pra 298 (301) [AIR V 46 C 101] : 1959 Cri L Jour 990.

### **Section 22B — Note 1**

[1] Where the employer has failed to com-

officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.* — For the purposes of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals, and

(b) “director” in relation to a firm means a partner in the firm.

## **22D. Payment of undisbursed amounts due to employees.**

All amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to the employee under this Act or any rule or order made thereunder shall, if such amounts could not or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known, be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be prescribed.

## **22E. Protection against attachment of assets of employer with Government.**

Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

## **22F. Application of Payment of Wages Act, 1936, to scheduled employments.**

(1) Notwithstanding anything contained in the Payment of Wages Act, 1936, the appropriate Government may, by notification in the Official Gazette, direct that, subject to the provisions of sub-section (2), all or any of the provisions of the said Act shall with such modifications, if any, as may be specified in the notification, apply to wages payable to employees in such scheduled employments as may be specified in the notification.

(2) Where all or any of the provisions of the said Act are applied to wages payable to employees in any scheduled employment under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of the provisions so applied within the local limits of his jurisdiction.]

## **23. Exemption of employer from liability in certain cases.**

Where an employer is charged with an offence against this Act, he shall be entitled, upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged :

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

**24. Bar of suits.**

No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed—

- (a) forms the subject of an application under section 20 which has been presented by or on behalf of the plaintiff, or
- (b) has formed the subject of a direction under that section in favour of the plaintiff, or
- (c) has been adjudged in any proceeding under that section not to be due to the plaintiff, or
- (d) could have been recovered by an application under that section.

**25. Contracting out.**

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

**26. Exemptions and exceptions.**

(1) The appropriate Government may, subject to such conditions if any as it may think fit to impose, direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees.

(2) The appropriate Government may, if for special reasons it thinks so fit, by notification in the Official Gazette, direct that "[subject to such conditions and] for such period as it may specify the provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment.

<sup>b</sup>[(2A) The appropriate Government may, if it is of opinion that, having regard to the terms and conditions of service applicable to any class of employees in a scheduled employment generally or in a scheduled employment in a local area "[or to any establishment or a part of any establishment in a scheduled employment] it is not necessary to fix minimum wages in respect of such employees of that class "[or in respect of employees in such establishment or such part of any establishment] as are in receipt of wages exceeding such limit as may be prescribed in this behalf, direct, by notification in the Official Gazette and subject to such conditions, if any, as it may think fit to impose,

**Section 24 — Note 1**

[1] Section 24, though it does not expressly refer to an employer, bars a suit by him to agitate his liability to pay wages in accordance with the order made under S. 20. 1957 Raj 35 (36) [A I R V 44 C 15] : ILR (1957) 7 Raj 74 (DB). (Hence there is no obstacle to his obtaining redress in an application under Art. 226 of the Constitution against the order.)

**Section 26 — Note 1**

[1] The granting of an exemption to certain areas from the operation of the Act by issuing a notification is not, and cannot be, equivalent to a repeal of the Act. It amounts only to a suspension of its operation. 1960 Bom 299 (310) [AIR V 47 C 86] : ILR (1959) Bom 1175 (DB). (Hence on the withdrawal of the exemption the Act would validly apply to that area.)

[2] A notification, granting the exemption

from the application of the Act, issued under sub-s. (2) of S. 26 by the appropriate Government and the subsequent withdrawal of the said exemption by a notification are administrative acts and not quasi-judicial acts. 1959 Bom 538 (541) [AIR V 46 C 166] : ILR (1959) Bom 462 (DB). (Hence it is not necessary for the State Government to conform to the principles of natural justice before issuing the notification withdrawing the exemption already granted.)

[3] Though the withdrawal of the exemption already granted is an administrative act the notification of the Government withdrawing the exemption must fail on the ground of it being arbitrary, invalid and illegal where the Government which heard the employees before making the order failed to give an opportunity to the employers also to put forward their case. 1959 Bom 538 (542) [A I R V 46 C 166] : ILR (1959) Bom 462 (DB).



that the provisions of this Act or any of them shall not apply in relation to such employees.]

(3) Nothing in this Act shall apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him.

*Explanation.*—In this sub-section a member of the employer's family shall be deemed to include his or her spouse or child or parent or brother or sister.

[a] Inserted by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 15 [17-9-1957]. [b] Inserted, *ibid*, 1954 (XXVI of 1954), S. 5 [20-5-1954].

## 27. Power of State Government to add to Schedule.

The appropriate Government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the <sup>A</sup>[State] be deemed to be amended accordingly.

## 28. Power of Central Government to give directions.

The Central Government may give directions to a <sup>A</sup>[State Government] as to the carrying into execution of this Act in the <sup>A</sup>[State].

## 29. Power of the Central Government to make rules.

The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules<sup>a</sup> prescribing the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the Central Advisory Board.

[a] For the Minimum Wages (Central) Rules, 1950, see Gaz. of Ind., 1950, Pt. II, S. 3, page 781.

## 30. Power of appropriate Government to make rules.

(1) The appropriate Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules<sup>a</sup> for carrying out the purposes of this Act.

### Section 27 — Note 1

[1] Under S. 27 there is no illegal or unconstitutional delegation of legislative powers by the legislature. By that section the legislature has not stripped itself of its essential powers and assigned to the administrative authority anything more than an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act. Hence the section is neither illegal nor unconstitutional. 1955 S C 25 (33) [A I R V 42 C 7] : 1955 S C R 735. (AIR 1953 Ajmer 65, *Affirmed*.)

[2] The State Government can add a new employment to the schedule only in exercise of its powers under S. 27 and not under S. 5 (2). The contents of the power conferred by S. 27 being wider than those by S. 5 (2) it cannot do under the latter provision all that it can do under the former. 1960 S C 1068 (1072) [AIR V 47 C 192]. (Under S. 5 (2) the State Government can extend the Act only to an employment which is already in the Schedule. Hence where the question is whether a notification issued under that section is within its power what is to be seen is whether the employment to which the Act has been applied

is already a scheduled employment. If not the notification is one in excess of its powers.)

[3] A notification issued under S. 27 need not prescribe any time limit for the introduction of the minimum rates of wages in the newly added industry. If any such time-limit has been prescribed by the notification that cannot acquire the status of a statutory duty or obligation and render an act invalid for the non-observance of its requirements. Hence the notification of the Government fixing the minimum wages for that industry is valid even though it has been issued only after the expiry of the self-imposed time-limit. 1957 Trav-Co 136 (138) [AIR V 44 C 42] (DB).

[4] Where the Chief Commissioner of the Province, after applying his mind to the question, ordered the Secretary to the Government to issue a notification under S. 27, it was held that the notification issued by the Secretary could not become vitiated on the ground that the Secretary did not obtain the approval of the Chief Commissioner for the draft notification before it was actually issued. 1953 Ajmer 65 (72) [AIR V 40 C 70].



(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the committees, sub-committees, <sup>b</sup>[\* \* \*] and the Advisory Board;
- (b) prescribe the method of summoning witnesses, production of documents relevant to the subject-matter of the enquiry before the committees, sub-committees, <sup>b</sup>[\* \* \*] and the Advisory Board;
- (c) prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates;
- (d) prescribe the time and conditions of payment of, and the deductions permissible from, wages;
- (e) provide for giving adequate publicity to the minimum rates of wages fixed under this Act;
- (f) provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such day;
- (g) prescribe the number of hours of work which shall constitute a normal working day;
- (h) prescribe the cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day;
- (i) prescribe the form of registers and records to be maintained and the particulars to be entered in such registers and records;
- (j) provide for the issue of wage books and wage slips and prescribe the manner of making and authenticating entries in wage books and wage slips;
- (k) prescribe the powers of Inspectors for purposes of this Act;
- (l) regulate the scale of costs that may be allowed in proceedings under section 20;
- (m) prescribe the amount of court-fees payable in respect of proceedings under section 20; and
- (n) provide for any other matter which is to be or may be prescribed.

[a] Rules have been framed by the Governments of the States of Andhra Pradesh (1954), Bihar (1951), Bombay (1951), Kerala (1951), Madhya Pradesh (1951), Mysore (1951), Orissa (1954), Punjab (1950), Rajasthan (1951) and Uttar Pradesh (1952). [b] The words "advisory committees, advisory sub-committees" were omitted by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 16 [17-9-1957].

### '[31. Validation of fixation of certain minimum rates of wages.

<sup>b</sup>(1) Where during the period commencing on the 1st day of April, 1952, and ending with the date of commencement<sup>23</sup> of the Minimum Wages (Amendment) Act, 1954, minimum rates of wages have been fixed by an appropriate Government as being payable to employees employed in any employment specified in Part I of the Schedule in the belief or purported belief that such rates were being fixed under sub-clause (i) of clause (a) of sub-section (1) of section 3, such rates shall be deemed to have been fixed in accordance with law, and shall not be called in question in any Court on the ground merely that the date specified in that sub-clause had expired at the time the rates were fixed :

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the payment by him by way of wages to any of his employees during the period specified in this section an amount which is less than the minimum

rates of wages referred to in this section or by reason of non-compliance during the period aforesaid with any order or rule issued under section 13.]

“(2) The provisions of sub-section (1) shall apply in relation to minimum rates of wages fixed by an appropriate Government during the period commencing on the 31st day of December 1954, and ending with the date of commencement<sup>d</sup> of the Minimum Wages (Amendment) Act, 1957, as they apply in relation to minimum rates of wages fixed by an appropriate Government during the period commencing on the 1st day of April 1952, and ending with the date of commencement<sup>aa</sup> of the Minimum Wages (Amendment) Act, 1954, subject to the modification that for the words, figures, brackets and letter ‘employment specified in Part I of the Schedule in the belief or purported belief that such rates were being fixed under sub-clause (i) of clause (a) of sub-section (1) of section 3’, the words, figures, brackets and letter ‘employment specified in Part I or Part II of the Schedule in the belief or purported belief that such rates were being fixed under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1) of section 3’ shall be substituted.]

[a] Section 31 was added by the Minimum Wages Act, 1954 (XXVI of 1954), S. 6 [20-5-1954]. [aa] That is, 20th May 1954. [b] Section 31 was renumbered as sub-section (1) thereof, *ibid* 1957 (XXX of 1957), S. 17 [17-9-1957]. [c] *Inserted, ibid.* [d] That is, 17th September 1957.

## THE SCHEDULE

[See sections 2(g) and 27]

### PART I<sup>a</sup>

1. Employment in any woollen carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or *dal* mill.
3. Employment in any tobacco (including *bidi* making) manufactory.
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.
- <sup>b</sup>7. Employment on the construction or maintenance of roads or in building operations.]
8. Employment in stone breaking or stone crushing.
9. Employment in any lac manufactory.
10. Employment in any mica works.

#### Schedule, Part I, Item 3 — Note 1

[1] The word ‘manufactory’ used in the schedule has for the purposes of the Act to be construed in such a manner as to include within its scope process of Bidi making carried on by the employees at their residences. 1960 Madh-Pra 181 (183) [A I R V 47 C 88] : 1960 Cri L Jour 915.

[2] Employment in an establishment where *bidis* are not actually made but *bidis* made by Contractors are received, sorted out, paid for and packed for market cannot be regarded as employment in the manufacture of *bidis* within the meaning of Item 3. 1960 Madh-Pra 174 (174) [A I R V 47 C 82] : 1960 Cri L Jour 832.

#### Schedule, Part I, Item 4 — Note 1

[1] A plantation maintained for the purpose of growing tea whether for collecting leaves or for collecting seeds will fall within the ambit of Item 4 of Part I of the schedule. 1958 Assam 153 (156) [AIR V 45 C 39] : ILR (1958) 10 Assam 104 (DB).

[2] The schedule does not indicate that the employee must be concerned in the matter of either growing tea or plucking or manufacturing it. Hence a compounder working in a tea estate is entitled to get his wages at the rates prescribed by the Government. 1960 Assam 22 (24) [AIR V 47 C 6] (DB).

#### Schedule, Part I, Item 8 — Note 1

[1] The stone breaking or stone crushing operations carried on in mines are not covered by item 8 of the schedule. 1960 S C 1068 (1072) [AIR V 47 C 192]. (AIR 1958 Bom 332, *Reversed*.)

#### Schedule, Part I, Item 10 — Note 1

[1] ‘Mica works’ is a general term of widest possible import, and includes all kinds of works in relation to mica including mining. Mines are also worked, and must be included in the general term ‘Mica works’. 1957 Raj 35 (36) [A I R V 44 C 15] : I L R (1957) 7 Raj 74 (DB).

11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.

[a] Part I of this Schedule has been amended by notifications published from time to time in the Official Gazettes of the States of Assam, Kerala, Madhya Pradesh, Orissa and Punjab. [b] *Substituted* and deemed always to have been substituted for item 7, by the Minimum Wages (Amendment) Act, 1957 (XXX of 1957), S. 18.

## PART II

1. Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry, and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce).

## [THE] MOTOR VEHICLES ACT, 1939

### (ACT IV of 1939)

[The Act printed here is as on 31-12-1960.]

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#### STATEMENT OF OBJECTS AND REASONS

"It has been recognised now for some years past that the Indian Motor Vehicles Act, 1914, which was framed to suit conditions at an early stage of development of motor transport, is no longer adequate to deal with conditions brought about by the rapid growth of motor transport in the past two decades. In the interests alike of the safety and convenience of the public and of the development of a co-ordinated system of transport, much closer control is required than the present Act permits, and it is necessary to take powers to regulate transport.

The question of the co-ordination of road and railway and the methods by which the object can be secured consistently with the public interest has engaged the attention of the Government of India for some years past. As early as 1933, Messrs. Mitchell and Kirkness carried out, at the instance of the Government of India, an enquiry into these problems and submitted a report in which they emphasised the importance of early action. The Road-Rail Conference convened by the Government of India in the same year passed a resolution, *inter alia* recommending control of public service and goods motor transport. In January 1935 the first Transport Advisory Council made definite recommendations to the same effect. In the following year, a Bill was framed to give effect to these recommendations which was approved by the second

**THE FIFTH SCHEDULE.—OFFENCES ON CONVICTION OF WHICH AN ENDORSEMENT SHALL BE MADE ON THE LICENCE OF THE PERSON AFFECTED.**

**THE SIXTH SCHEDULE.—REGISTRATION MARKS.**

**THE SEVENTH SCHEDULE.—MAXIMUM AXLE WEIGHTS PERMISSIBLE FOR TRANSPORT VEHICLES.**

**THE EIGHTH SCHEDULE.—LIMITS OF SPEED FOR MOTOR VEHICLES.**

**THE NINTH SCHEDULE.—TRAFFIC SIGNS.**

**THE TENTH SCHEDULE.—DRIVING REGULATIONS.**

**THE ELEVENTH SCHEDULE.—SIGNALS.**

Transport Advisory Council who also recommended a complete overhaul of the Act of 1914 at an early date and the appointment of a committee to enquire into and report on the subject of compulsory insurance of motor vehicles.

A Bill was introduced in August 1936 to amend the Act of 1914 on certain points. It was, however, recognised then that a more comprehensive measure would have to follow. The Legislature decided that the Bill should be circulated and this was done, but before further action could be taken on it, the reports of the Motor Vehicles Insurance Committee and of the Wedgwood Committee were received. Government decided that in the circumstances it was preferable to drop the partial measure and to present a more comprehensive Bill. The present Bill incorporates the main recommendations of both these Committees and is the outcome of consultations with Provincial Governments and the third Transport Advisory Council which deliberated on it in December last. The principle of compulsory insurance has been approved by almost all the Provincial Governments, though there are differences of opinion as to whether its adoption should be entirely optional or whether, in the interests of uniformity, its adoption within a certain period of time should be obligatory."

—Gazette of India, 1938, Part V, p. 114.

#### AMENDING ACT C OF 1956

##### STATEMENT OF OBJECTS AND REASONS

"The Motor Vehicles Act, 1939, save for Chapter VIII relating to the insurance of motor vehicles against third party risks (which came into force on 1st July, 1946) has been in force since July, 1939, in Part A and C States and since 1st April, 1951, in Part B States. As war broke out soon after the promulgation of the Act, it could not be given a

trial under normal conditions. Nevertheless, it did succeed in bringing about improved standards of driving and road safety and greater co-ordination among the competitive "small-owners" of transport vehicles. Shortly after the conclusion of the war, the need was felt for amending the Act generally with a view to removing the defects revealed in

practice and ensuring better co-ordination of road and rail transport. An amending Bill was accordingly introduced in the Central Legislative Assembly in 1946 and it reached the stage of a report by a Select Committee. Its further progress was halted for a time by the constitutional changes leading to independence. Subsequently, other developments like the nationalisation of road transport in many States necessitated reconsideration of the proposed amendments. In the meantime, the Motor Vehicles (Amendment) Act, 1947, was passed in order to establish reciprocity between the Provinces of British India and the Indian States in the matter of third party insurance of motor vehicles. This Act was, however, not brought into force on account of the constitutional changes that had taken place and it was repealed under the Repealing and Amending Act, 1950.

With the finalisation of the First Five Year Plan and discussion on the draft schemes for inclusion in the Second Five Year Plan, the trend of road transport development has become more clearly known and the time is now opportune to introduce legislation to amend the Motor Vehicles Act, 1939. This Bill includes most of the provisions of the Motor Vehicles (Amendment) Bill, 1946, as reported on by the Select Committee, as also various new amendments.

Some of the more important amendments are as follows :

- (1) The existing classification of motor vehicles based on the use to which they are put is being replaced by a classification based on the type of construction of the vehicles.
- (2) It has been found necessary to provide for the licensing of conductors and a new Chapter II-A is being introduced for the purpose.
- (3) The Central Government will have permissive powers to regulate inter-State operation of transport vehicles. At present, there is no proper regulation of inter-State traffic with the result that on many inter-State routes, passengers and goods have to be transferred to other vehicles at inter-State borders. A stage has reached when it is neces-

sary, in the public interest, to take suitable measures to regulate the inter-State operation of transport vehicles.

- (4) The necessity to amend the Motor Vehicles Act, 1939, is most urgent in regard to the operation of road transport services by 'nationalised' agencies. The Act, in its present form, contains no provisions relating to the introduction or expansion of nationalised transport services. Some States have either amended the Act with local effect only, or promoted separate legislation, to implement their schemes of nationalisation of road transport. It is considered desirable to have a uniform law relating to the nationalisation of road transport services. With this end in view, a new Chapter IV-A has been inserted and provision has been made therein for payment of compensation to any holder of a permit, if his permit is cancelled or the terms thereof are modified.
- (5) The State Governments are being empowered to set up tribunals to determine and award damages in cases of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles and also to adjudicate on the liability of the insurer in respect of payment of damages awarded. At present a Court decree has to be obtained before the obligation of an insurance company to meet claims can be enforced. The amendment is designed to remove the existing difficulty experienced by persons of limited means in preferring claims on account of injury or death caused by motor vehicles.
- (6) Several State Governments had pointed out that the offences relating to motor vehicles were on the increase mainly because the penalties provided in Chapter IX were inadequate. Provision has, therefore, been made to enhance the penalties of fine and also to introduce the punishment of imprisonment for more serious offences."

—Gaz. of Ind., 1955, Extra., Pt. II-Sec. 2, page 624.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts XL of 1939; XXVI of 1940; XX of 1942; I of 1943; VI of 1945; XXVII of 1947; III of 1951; XLVIII of 1952; C of 1956; V of 1960; II of 1960; LVIII of 1960.
- Amended in Bihar by Bihar Acts XXVII of 1950; I of 1954.
- Amended in Bombay by Bom. Acts VII of 1947; XXI of 1954; XXXI of 1954; XV of 1958.
- Amended in Hyderabad by Hyd. Act XLV of 1956.
- Amended in Madhya Pradesh by C. P. & Berar Act III of 1948.
- Amended in Madras by Mad. Acts XX of 1948; XLIV of 1949; XXXIX of 1954; XIX of 1957.
- Amended in Mysore by Mys. Act XIV of 1953.
- Amended in Orissa by Ori. Act I of 1949.
- Amended in Punjab by E. P. Act XXVIII of 1948; Punj. Act XXXI of 1955.
- Amended in Uttar Pradesh by U. P. Acts XI of 1948; X of 1951; XXVIII of 1953; XII of 1957; XLII of 1958.
- Amended in West Bengal by W. B. Act XIX of 1951.



- Adapted by A.C.A.O., 1948; A. L. O., 1950;  
3 A. L. O., 1956; An. P. A. L. O., 1956;  
Guj. A. L. O., 1960; Ker. A. L. O., 1958.
- Extended by Bom. Act IV of 1950.
- Extended by Assam Reg. IX of 1951.
- Extended by Pondicherry (Application of  
M. V. Act) Order, 1959.

### COGNATE ACTS AND PROVISIONS

1. CENTRAL EXCISES AND SALT ACT, I OF 1944, Sch. I, Items 4, 10, 27.
2. HACKNEY CARRIAGES ACT, XIV OF 1879.
3. NATIONAL HIGHWAYS ACT, XLVIII OF 1956.
4. ROAD TRANSPORT CORPORATIONS ACT, LXIV OF 1950.
5. STAGE-CARRIAGES ACT, XVI OF 1981.

## [THE] MOTOR VEHICLES ACT, 1939

(ACT IV OF 1939)<sup>a</sup>

[16th February, 1939.]

*An Act to consolidate and amend the law relating to motor vehicles.*

**WHEREAS** it is expedient to consolidate and amend the law relating to motor vehicles [\* \* \*]; It is hereby enacted as follows:—

[a] For the Statement of Objects and Reasons, see Gazette of India, 1938, Pt. V, p. 114; for Report of the Select Committee, see *ibid.*, p. 187. For the Statement of Objects and Reasons of the Motor Vehicles (Amendment) Act, 1958 (C of 1958), see Gaz. of Ind., 1955, Extra., Pt. II-section 2, page 624; and for Report of Joint Committee, see *ibid.*, 1956, Extra., Pt. II-section 2, page 855/24. This Act has been applied to—All excluded areas in Assam by Assam Government Notification No. 2806-G. S., dated 14th August 1939; The Darjeeling District see Notification Nos. 1771-PL, dated 15th August, 1939, Calcutta Gazette, dated 24th August, 1939 and Bengal Government Notification No. 2393-PL, dated 1st December 1939.

The Act as applied to Railway Lands in Rajputana came into force on 15th January, 1944, see Notification No. P/L-36, dated 13th January, 1944, Gazette of India, 1944, Pt. I-A, p. 10.

This Act has been extended to new provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

The Act has been extended to the States merged in the former State of Bombay—See Bom. Act IV of 1950.

All the provisions of the Motor Vehicles Act, 1939, as amended from time to time and all rules, orders, notifications and forms thereunder, subject to any amendments to which for the time being they are subject in the rest of Assam, have been applied to, and deemed to be in force in, the United Khasi Jaintia Hills Districts as were known as the Khasi States before the commencement of the Constitution and in which the Motor Vehicles Act, 1939, was not in force.—See the Assam Regulation IX of 1951, S. 2 [8-8-1951].

The Motor Vehicles Act, 1939, as in force in the Union territory of Delhi immediately before the 19th June, 1959, is applied to, and shall be in force in, Pondicherry subject to certain modifications; the Motor Vehicles International Circulation Rules, 1933, the Motor Vehicles (Third Party Insurance) Rules, 1946 and any other rules, notifications and orders made or issued under the said Act and similarly in force, in so far as their application is required for the purpose of effectively applying the provisions of the said Act, are also applied to, and shall be in force in, Pondicherry.—The Pondicherry (Application of Motor Vehicles Act) Order, 1959, Para. 2.19-6-1959, (C.S.R. 715, D/-27-5-1959, published in Gaz. Ind., 1959, Pt. II-section 3 (i), page 880).

[b] The words "in the provinces of India" were omitted by A.L.O., 1950.

## CHAPTER I PRELIMINARY

### 1. Short title, extent and commencement.

(1) This Act may be called **THE MOTOR VEHICLES ACT, 1939**.

[(2) It extends to the whole of India except the State of Jammu and Kashmir:

#### Preamble — Note 1

[1] Although Motor traffic also falls within the expression "Commerce" in Article 301 of the Constitution and therefore the Motor Vehicles Act which imposes restrictions on Motor

traffic is repugnant to that Article the Act has not become unconstitutional on the ground of that repugnancy because as an "existing law" it has been saved by Article 305 of the Constitution from the operation

Provided that Chapter VIII shall take effect in the State of Kerala only from such date as the Central Government may, by notification in the Official Gazette, appoint; and until that Chapter so takes effect in that State, Chapter VII of the Travancore-Cochin Motor Vehicles Act, 1125, shall have effect in that State as if enacted in this Act.]

[a] *Substituted* for former sub-sections (2) and (3) by the Motor Vehicles (Amendment) Act, 1960 (V of 1960), S. 2 [w. e. f. 1-6-1960].

## 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

(1) “axle weight” means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface whereon the vehicle rests;

(2) “certificate of registration” means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter III:

\*[(2A) “Commission” means the Inter-State Transport Commission constituted under section 63A;]

[a] Clauses (2A), (2B) and (2C) were *inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (a) [w. e. f. 16-2-1957].

\*[(2B) “conductor,” in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed;]

[a] *See* Foot-note (a) under Cl. (2A).

\*[(2C) “conductor’s licence” means the document issued by a competent authority under Chapter IIA authorizing the person specified therein to act as a conductor;]

[a] *See* Foot-note (a) under Cl. (2-A).

(3) “contract carriage” means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares;

\*[\* \* \* \* \*]  
[a] Explanation to cl. (3), was *omitted* by the Motor Vehicles (Amendment) Act 1956 (C of 1956), S. 2. (b) [w. e. f. 16-2-1957].

\*[(4) \* \* \* \* \*]

[a] Clause (4) was *omitted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2. (c) [w. e. f. 16-2-1957].

(5) “driver” includes, where a separate person acts as steersman of a motor vehicle, that person as well as any other person engaged in the driving of the vehicle;

\*[(5A) “driving licence” means the document issued by a competent authority under Chapter II authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description;]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2. (d) [w. e. f. 16-2-1957].

**Preamble — Note 1 (contd.)**  
of Article 301. 1953 Mad 279 (294) [AIR V 40 C 102] : ILR (1953) Mad 304.

[2] There is no provision in the Act which has provided for the confiscation of property by the State or gives it a monopoly in motor business and therefore, the Act cannot be declared to have become ultra vires after the

commencement of the Constitution. 1956 Pat 73(76) [(S) AIR V 43 C 20]. (*Held*, further that even if it had become ultra vires the effect of the first amendment to the Constitution relating to Art. 19 in view of its retrospective operation is that the Act must be treated as not having become ultra vires at all.)

- (6) "fares" includes sums payable for a season ticket or in respect of the hire of a contract carriage;
- (7) "goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;
- (8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

\*[(9) "heavy motor vehicle" means a transport vehicle or omnibus the registered laden weight of which, or a motor car or tractor the unladen weight of which, exceeds <sup>b</sup>[8,200 kilograms];]

[a] *Substituted* for the original clause by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (e) [w. e. f. 16-2-1957]. [b] *Substituted* for the figures and words "18,000 pounds avoirdupois" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 2 [w. e. f. 1-1-1961].

\*[(9A) "India" means the territories to which this Act extends;]

[a] *Inserted* by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

(10) "invalid carriage" means a motor vehicle the unladen weight of which does not exceed <sup>a</sup>[300 kilograms], specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

[a] *Substituted* for the words "five hundredweights" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 2 [w. e. f. 1-1-1961].

\*[(11) \* \* \* \* \*]

[a] Clause (11) was *omitted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2. (f) [w. e. f. 16-2-1957].

(12) "licensing authority" means an authority empowered to grant licences appointed by the State Government by rule made under section 21 <sup>a</sup>[or section 21];]

[a] *Added* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2. (g) [w. e. f. 16-2-1957].

\*[(13) "light motor vehicle" means a transport vehicle or omnibus the

#### Section 2 (8) — Note 1

[1] A private carrier which is adapted for the use of the carriage of goods is a goods vehicle within the definition of S. 2 (8). 1959 All 373 (374) [AIR V 46 C 87].

[2] A motor vehicle constructed or adapted for use for the carriage of goods is at all times a goods vehicle whether or not it is actually carrying goods. 1958 Ker 249 (250) [AIR V 45 C 88] · ILR (1958) Ker 372 : 1958 Cri L Jour 1031.

[3] A goods truck is not a public service vehicle falling within the definition contained in S. 2 (25) but is only a goods vehicle as defined in S. 2 (8). 1953 Pat 130 (130) [AIR V 40 C 39] : 1953 Cri L Jour 914. (Hence the conditions contained in R. 4 (b) of the Bihar Motor Vehicles Rules of 1940 need not be complied with for driving a goods truck.)

[4] A motor car which is used only on two occasions to carry newspaper bundles to railway station comes within the definition of a goods vehicle contained in the second part of S. 2 (8) even though it cannot be said in relation to that car that it is used solely for

the carriage of goods or solely for the carriage of goods in addition to passengers. The word "solely" in the section is used only in contradistinction to the words which follow namely "in addition to passengers." 1945 Mad 440 (440, 441) [AIR V 32] : ILR (1946) Mad 222 : 47 Cri L Jour 233.

#### Section 2 (9) — Note 1

[1] A bus or a taxi whatever may be its weight is not a heavy transport vehicle within the meaning of S. 2 (9). 1955 Mad 627 (628) [AIR V 42 C 194] : 1955 Cri L Jour 1506. (Hence a charge against the owner of a bus weighing 15,900 for permitting a driver holding a licence for a light transport vehicle to drive that bus cannot stand.)

#### Section 2 (13) — Note 1

[1] A bus or a taxi irrespective of its weight would come within the definition of a light transport vehicle contained in S. 2 (13). 1955 Mad 627 (628) [AIR V 42 C 194] : 1955 Cri L Jour 1506.

registered laden weight of which, or a motor car or tractor the unladen weight of which, does not exceed <sup>b</sup>[3,000 kilograms];]

[a] *Substituted* for cl. (13) by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (h) [w. e. f. 16-2-1957]. [b] *Substituted* for the figures and words "6,000 pounds avoirdupois" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 2 [w. e. f. 1-1-1961].

\*[(14) "medium motor vehicle" means any motor vehicle other than a motor cycle, invalid carriage, light motor vehicle, heavy motor vehicle or road-roller;]

[a] *Substituted* for cl. (14) by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (h) [w. e. f. 16-2-1957].

(15) "motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;

(16) "motor car" means any motor vehicle other than a transport vehicle, <sup>a</sup>[omnibus], road-roller, tractor, motor cycle or invalid carriage;

[a] *Substituted* for "locomotive", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (i) [w. e. f. 16-2-1957].

(17) "motor cycle" means a motor vehicle, other than an invalid carriage, with less than four wheels the unladen weight of which, inclusive of any side-car attached to the vehicle, does not exceed <sup>a</sup>[500 kilograms];

[a] *Substituted* for the figures and words "900 pounds avoirdupois" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 2 [w. e. f. 1-1-1961].

(18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or <sup>a</sup>[a vehicle of a special type adapted for use only in a factory or in any other enclosed premises];

[a] *Substituted* for "used solely upon the premises of the owner" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (j) [w. e. f. 16-2-1957].

<sup>a</sup>[(18-A) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (k) [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

"Under section 2 (15) a "motor cab" has been defined to mean a motor vehicle which may carry not more than six passengers excluding the driver. In the proposed clause (18-A), 'omnibus' has been defined to mean any motor vehicle which may carry more than seven persons excluding the driver. When a motor vehicle is constructed for car-

rying seven persons only excluding the driver, it comes neither within the definition of 'motor cab' nor within the definition of 'omnibus'. To remove this defect, the Committee have in the definition of 'omnibus' substituted the words "six persons" for "seven persons".

—J. C. R. of Amending Act C of 1956.

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;

### Section 2 (19) — Note 1

[1] The definition of "owner" in the Motor Vehicles Act is not exhaustive and so the word must be taken to mean, what it ordinarily means, namely a person in whom the proprietary title vests. Hence a manager of a limited company who is only an agent of the company and who cannot be described to be an owner of the things vesting in the company cannot be regarded as the owner of a motor vehicle belonging to the company for the purposes of

the Act. 1950 All 234 (237) [AIR V 37 C 89] : 51 Cri L Jour 734.

[2] A person who is not the guardian of a minor in possession of a motor vehicle and who is in possession as the purchaser under an outright sale and not under hire purchase contract cannot claim the benefit of the definition of an "owner" contained in S. 2 (19). (60) 1960-1 Andh W R 293 (295).

(20) "permit" means the document issued by <sup>a</sup>[the Commission or] a State or Regional Transport Authority authorizing the use of a transport vehicle as a contract carriage, or stage carriage, or authorizing the owner as a private carrier or public carrier to use such vehicle ;

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (d) [w. e. f. 16-2-1957].*

(21) "prescribed" means prescribed by rules made under this Act;

(22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42;

(23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported ;

(24) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;

<sup>a</sup>[(26) "registered axle weight" means, in respect of the axle of any vehicle, the axle weight certified and registered by the registering authority as permissible for that axle;]

[a] *Substituted for the original clause, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (m) [w. e. f. 16-2-1957].*

(27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;

#### Section 2 (20) — Note 1

[1] The fact that the permits granted by the Regional Transport Authority under S. 62 are to be effective only for a limited period does not exclude them from the definition given in S. 2 (20). 1959 Punj 1 (7) [AIR V 46 C 1] : ILR (1958) Punj 1590 (FB).

[2] A renewed permit is nothing but a continuation of the original permit. 1957 S C 489 (492) [(S) AIR V 44 C 74] : 1957 S C R 663. (Hence cancellation of the original permit automatically puts an end to the renewal also.)

[3] A permit as defined in S. 2 (20) relates only to a specified vehicle and not to any other vehicle possessed or owned by the permit holder. 1960 All 247 (250) [AIR V 47 C 56].

place under the Act, it must be a road, street, way or a place over which the public have a right to pass or to which the public are granted access. As the rights of private citizens are concerned, the expression has to be construed strictly. 1938 Lah 817 (818) [AIR V 25] : 40 Cri L Jour 284. (Houses situated on two sides of motor stand of petitioner — City wall running along third side — Fourth side open and looking towards public street — Land privately owned and leased out to petitioner — Deep city drain passing through portion leased — Bridge constructed to cross city drain — Lorries of petitioner parked over bridge — Held that the place was not public place.)

#### Section 2 (25) — Note 1

[1] A goods truck is not a public service vehicle. 1958 Madh Pra 29 (29) [AIR V 45 C 16] : 1958 Cri L Jour 51 + 1953 Pat 130 (130, 131) [AIR V 40 C 39] : 1953 Cri L Jour 914. (It is a goods vehicle within S. 2 (8).)

#### Section 2 (24) — Note 1

[1] The mere fact that a place would be styled as a public place for the purposes of the Gambling Act and the Penal Code, does not necessarily mean that it is a public place as defined in this Act. To make it a public

- (28) "registering authority" means an authority empowered to register motor vehicles under Chapter III;
- (29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

\*[(29-A) \* \* \* \* \*].

[a] Clause (29-A), inserted by A. L. O., 1950, was omitted by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

#### CLAUSE (29-B)

#### STATE AMENDMENT

#### ORISSA

After clause (29-A) insert the following, namely,—

"(29-B) 'State Transport Service' means a service in which the State Government have entire or partial financial interest and which the State Government may, by notification, declare to be a State Transport Service for the purposes of this Act."

—Orissa Act I of 1949, S. 2.

[a] The remaining provisions of this Orissa Act I of 1949, except section 1 which applies to the whole of the State of Orissa, are, by notifications published in the State Gazette, brought into force in the districts of Angul and Sambalpur on 1-5-1949; Cuttack, Balasore and Mayurbhanj on 7-3-1950; Dhenakanal on 1-11-1950; and Bolangir and Sundargarh on 4-6-1951. And from the date of the notification the provisions of Orissa Act XXXVI of 1947, are repealed in respect of the said districts. However, when the provisions so brought into force are withdrawn from the said districts the said Orissa Act XXXVI of 1947, shall be deemed to be revived in the said districts from the date of the publication of the notification of withdrawal (see section 1 (4) and (5) of Orissa Act I of 1949).

The Orissa Act I of 1949 is extended to the States merged in the State of Orissa from 30-9-1950—see Orissa Acts IV of 1950, S. 4 and XVI of 1950, S. 2 (vii).

- (30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) \*[\* \* \*]; but excludes a road-roller;

[a] The words and figures "the unladen weight of which does not exceed 16,000 pounds avoirdupois" were omitted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (n) [w. e. f. 16-2-1957].

- (31) "traffic signs" includes all signals, warning sign posts, direction posts, or other devices for the information, guidance or direction of drivers of motor vehicles;

- (32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle;

- \*[(33) "transport vehicle" means a public service vehicle or a goods vehicle;]

[a] Substituted for the original clause, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 2 (o) [w. e. f. 16-2-1957].

- (34) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

- (35) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

#### Section 2 (33) — Note 1

[1] A private carrier which is a vehicle adopted for the use of the carriage of goods is a transport vehicle. 1959 All 373 (374) [AIR V 46 C 87].

[2] A goods truck is a transport vehicle because it is a goods vehicle within the meaning of S. 2 (8). 1953 Pat 130 (130, 131) [AIR V 40 C 39]; 1953 Cri L Jour 914.

[3] Under S. 2 (33) as it stands after the amendment of 1956 a tractor or tractor cum

trailer combination vehicle is not a transport vehicle. ('60) 1960-1 Andh W R 194 (195). (Hence no fitness certificate is required under S. 38 to enable the use of the tractor.)

[4] A tractor used for carrying manure for agricultural purposes is not a transport vehicle within the meaning of S. 2 (33). 1954 Mad 1021 (1023) [AIR V 41 C 355]; 1954 Cri L Jour 1578.

## CHAPTER II

## LICENSING OF DRIVERS OF MOTOR VEHICLES

**3. Necessity for driving licence.**

(1) No person shall drive a motor vehicle in any public place unless he holds an effective <sup>a</sup>[driving licence] issued to himself authorizing him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a <sup>b</sup>[transport vehicle] unless his <sup>a</sup>[driving licence] specifically entitles him so to do.

(2) A <sup>a</sup>[State Government] may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

•[(3) \* \* \* \* \*

[a] *Substituted* for "licence" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 3 [w.e.f. 18-2-1957]. [b] *Substituted* for "public service vehicle", *ibid.* [c] Sub-section (3) was *omitted* by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 2 [3-4-1942].

**4. Age limit in connection with driving of motor vehicles.**

(1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) Subject to the provisions of section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

•[(3) \* \* \* \* \*

[a] Sub-section (3) was *omitted* by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 3 [3-4-1942].

**5. Responsibility of owners of motor vehicles for contraventions of sections 3 and 4.**

No owner or person in charge of a motor vehicle shall cause or permit any

**Section 3 — Note 1**

[1] To constitute an offence under S. 3 the offenders must have driven a motor vehicle not only without an effective licence but also in any public place. Hence he cannot be convicted under S. 3 where there is no evidence to show that he drove the vehicle in any public place. ('55) 1955 Raj L W 503 (503).

[2] The plea of an accused that he drove a motor vehicle without a licence in the absence of any admission that he drove the vehicle in a public place is not sufficient to convict him of an offence under S. 3. ('55) 1955 Raj L W 258 (258).

[3] The non-possession of valid licence while driving the car is not an offence under S. 3. All that the section requires is that the persons driving the car must have obtained the licence, and not that he should carry it whenever he is on the road with his car. It is only when the licence is not produced as required by sub-s. (3) of S. 86 that the person driving the car can be prosecuted for a contravention of S. 3. ('57) 1957 Cri L Jour 86 (88) (Pat).

[4] A person driving a motor vehicle after the expiry of the term of his licence without renewing the same contravenes the provisions of S. 3 (1) and is guilty under S. 112. The subsequent renewal of the licence does not date back to the date of the expiry of the old licence so as to have the effect of cancelling the offence committed before he obtained the renewal. 1942 Mad 196 (197) [A I R V 29] : 43 Cri L Jour 524.

[5] Where a person, having applied for the renewal of his licence before its expiry, continued to drive his car after the date of expiry, bona fide believing that the licence would be renewed retrospectively from the date of expiry, and the licence was also in fact so renewed, it was held that he could not be convicted of an offence under S. 3 on the ground that during the period from the expiry of the original licence to the date of his receipt of the renewed licence he had no effective licence with him. 1950 Mad 479 (479) [A I R V 37 C 205] ILR (1951) Mad 241: 51 Cri L Jour 824.

**Section 4 — Note 1**

[1] In the absence of any evidence contradicting the statement of the accused that he is above twenty years of age he cannot be convicted of an offence under S. 4. ('55) 1955 Raj L W 503 (503).

[2] A person below twenty years of age driving a transport vehicle contravenes the provisions of S. 4 (2) notwithstanding the fact that he holds a driving licence because that licence granted by the authority under a mistaken belief of law does not amount to a valid licence. The mistake of the authority may render it improper to impose any punishment on the accused but it cannot render the contravention anything less than an offence. 1954 Vindh-Pra 17 (19, 20) [A I R V 41 C 8].

**Section 5 — Note 1**

[1] A contravention under S. 5 arises in the very act of the owner permitting a person

person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

### 6. Restrictions on the holding of driving licences.

(1) No person shall, while he holds any \*[driving licence] for the time being in force, hold any other \*[driving licence] except a \*[driving licence] issued in accordance with the provisions of section 14, or a document authorizing, in accordance with the rules made under section 92, the person specified therein to drive a motor vehicle.

(2) No holder of a \*[driving licence] shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the \*[driving licence] authorizes the holder to drive.

[a] Substituted for "licence" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 4 (w.e.f. 18-2-1957).

### 7. Grant of driving licence.

(1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a \*[driving licence] may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a \*[driving licence] to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a \*[driving licence].

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Where the application is for a \*[driving licence] to drive as a paid

#### Section 5 — Note 1 (contd.)

without driving licence to drive his vehicle. The owner's knowledge as to that person not possessing a licence is not a necessary ingredient of the offence. 1951 Bom 308 (308) [AIR V 38 C 66] : ILR (1951) Bom 200 (DB).

[2] A motor bus owner allowing his driver to drive his omnibus without a licence cannot plead in defence to his prosecution that the expiry of the driver's licence was not known to him. 1927 Mad 1080 (1080) [AIR V 14] : 51 Mad 187 : 28 Cri L Jour 962.

[3] Where a motor bus is driven by a person who has no licence without the knowledge of the owner, the owner cannot be convicted. Nor can he be convicted on the ground that his licensed driver had given the unlicensed driver permission to drive. 1928 Cal 410 (411, 412) [AIR V 15] : 29 Cri L Jour 694.

[4] Where the driver of a motor car drove it beyond the limits of his licence, held that the owner of the car was not liable unless there was evidence to show that he knew that his driver was going to take the car beyond the limits of licence or that he in any way authorised that act. 1932 Bom 474 (475) [AIR V 19] : 33 Cri L Jour 746 (DB).

[5] Absent master is not criminally liable for fast driving where he had cautioned the driver not to exceed the regulation speed and to drive with due care and caution. 1924 Cal 985 (986) [AIR V 11] : 51 Cal 948 : 25 Cri L Jour 1209 (DB).

[6] The owner of a bus permitting his driver who has authority to drive only a light transport vehicle to drive his bus, cannot be said to contravene the provisions of S. 5 of the Act because a bus or a taxi whatever its weight may be is only a light vehicle within the meaning of S. 2 (9) read with S. 2 (13). 1955 Mad 627 (628) [AIR V 42 C 194] : 1955 Cri L Jour 1506.

[7] The person who was in charge of the car at the time of the accident or immediately thereafter and to whose orders the driver was in fact submitting at that time is amenable to this section even though he may not himself be the owner of the car. 1928 All 261 (262) [AIR V 15] : 29 Cri L Jour 357 (DB).

[8] Where the licensed driver while driving a vehicle on the owner's business permitted another who had no licence to drive the vehicle and a person on the road was run over and killed it was held that the owner was vicariously liable for payment of damages on a claim made by the next-of-kin of the deceased. 1955 Assam 157 (161) [S] AIR V 42 C 36 (DB).

#### Section 7 — Note 1

[1] A licence granted by mistake to person who is disqualified to hold a licence under S. 4 is no licence at all. Hence driving a vehicle under such licence amounts to an offence. 1954 Vindh-Pra 17 (19) [AIR V 41 C 8].



employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a <sup>a</sup>[driving licence] to drive as a paid employee and every application for a <sup>a</sup>[driving licence] to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in subsection (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the <sup>a</sup>[driving licence] applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the <sup>a</sup>[driving licence] :

Provided that—

(a) a <sup>a</sup>[driving licence] limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage;

(b) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a <sup>a</sup>[driving licence] to drive such motor vehicle as the licensing authority may specify in the <sup>a</sup>[driving licence.]

(6) No <sup>a</sup>[driving licence] shall be issued to any applicant unless—

<sup>b</sup>[\* \* \*] he passes to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule, <sup>c</sup>[\* \* \*]

<sup>d</sup>[\* \* \* \* \*]

<sup>e</sup>[Provided that, where the application is for a licence to drive a motor cycle or a light motor vehicle, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule, if the licensing authority is satisfied—

(a) that the applicant has previously held a licence to drive and that the period between the date of expiry of that licence and the date of such application does not exceed five years; or

(b) that the applicant holds a driving licence issued by a competent authority of any country outside India :]

Provided further that where the application is for a <sup>a</sup>[driving licence] to drive a motor vehicle (not being a transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from <sup>f</sup>[\* \* \*] the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the State Government.

<sup>g</sup>[(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and, for the purposes of Part I of the test,—

(a) a person who passes the test in driving a heavy motor vehicle shall be deemed also to have passed the test in driving any medium motor vehicle or light motor vehicle;

(b) a person who passes the test in driving a medium motor vehicle shall be deemed also to have passed the test in driving any light motor vehicle.]

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness

and of his competence to drive and has paid to the authority a fee of <sup>b</sup>[eleven rupees] the licensing authority shall grant the applicant a <sup>a</sup>[driving licence] unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a <sup>a</sup>[driving licence]:

Provided,—

<sup>1</sup>[ \* \* \* \* \* ]

<sup>1</sup>[\* \*] a licensing authority may issue a <sup>a</sup>[driving licence] to drive a motor cycle or a <sup>k</sup>[light motor vehicle] notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority:

<sup>1</sup>[Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence issued under this Act, unless it is satisfied that there is good reason for his inability to obtain a duplicate copy of his former licence.]

[a] Substituted for "licence" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956) S. 5 (a) [w. e. f. 16-2-1957]. [b] The brackets and letter "(a)" were omitted, *ibid.*, 1942, (XX of 1942), S. 4 [3-4-1942]. [c] The word "or" was omitted, *ibid.* [d] Clause (b) was omitted, *ibid.* [e] Substituted for the first Proviso, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 5 (b) [w. e. f. 16-2-1957]. [f] The words "Part I of" were omitted by Act XX of 1942, S. 4 [3-4-1942]. [g] Substituted for the original sub-sec (7), by Act (C of 1956), S. 5 (c) [w. e. f. 16-2-1957]. [h] Substituted for "five rupees", *ibid.*, S. 5 (d) [w. e. f. 16-2-1957]. [i] Clause (a) was omitted by Act XX of 1942, S. 4 [3-4-1942]. [j] The brackets and letter "(b)" were omitted, *ibid.* [k] Substituted for "motor car" by Act C of 1956, S. 5 (d) [w. e. f. 16-2-1957]. [l] Inserted, *ibid.*

### OBJECTS AND REASONS

Section 7 (6) — "Sub-section (8) of section 7 of the Act provides for the exemption of experienced drivers from Part I of the driving test. The amendment of sub-section (8) seeks to provide exemption of persons who hold a driving licence issued by a competent authority in a foreign country also."—S. O. R. of Amending Act C of 1956.

"The committee feel that an applicant for a licence to drive a motor cycle or a light motor vehicle who has previously held a licence should be exempted from Part I of the driving test, in case the period between the date of expiry of that licence and the date of his application does not exceed five years."—J. C. R. of Amending Act C of 1956.

### 8. Form and contents of driving licence.

(1) Every <sup>a</sup>[driving licence], except a <sup>a</sup>[driving licence] issued under section 14, shall be in Form D as set forth in the First Schedule and shall have affixed thereto one of the signatures or thumb impressions given on the form of application for the <sup>a</sup>[driving licence] and, in the case of a <sup>a</sup>[driving licence] to drive as a paid employee or to drive a transport vehicle, one of the photographs referred to in sub-section (4) of section 7.

(2) A <sup>a</sup>[driving licence] shall specify whether the holder is entitled to drive as a paid employee and whether he is entitled to drive a <sup>b</sup>[transport vehicle] and shall further be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- (a) a motor cycle,
- <sup>c</sup>[(b) invalid carriage,
- (c) light motor vehicle,
- (d) medium motor vehicle,
- (e) heavy motor vehicle,
- (f) road-roller,
- (g) motor vehicle of a specified description.]

[a] Substituted for "licence", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 6 [w. e. f. 16-2-1957]. [b] Substituted for "public service vehicle", *ibid.* [c] Substituted for clauses (b) to (k), *ibid.*

### <sup>a</sup>[8A. Additions to driving licence.

(1) Any person holding a driving licence issued under this Chapter who is not for the time being disqualified for holding or obtaining a driving licence

may apply in Form AA as set forth in the First Schedule, to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application relates to a licence to drive as a paid employee, in which the employer resides or carries on business, for the addition of another class of motor vehicle to the licence.

(2) The provisions of section 7 shall apply to an application under this section as if the application were for the grant of a licence under that section to drive the class of motor vehicle which the applicant desires to be added to his licence :

Provided that the provisions of sub-sections (3) and (4) of that section shall not apply where the applicant is the holder of a licence to drive as a paid employee or to drive a transport vehicle.

(3) No fee other than a fee for the test of competence to drive shall be charged for an addition to a driving licence under this section.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 7 [w. e. f. 16-2-1957].

## 9. Extent of validity of driving licence.

(1) Subject to any rules made by a <sup>a</sup>[State Government] under sub-section (3), a <sup>a</sup>[driving licence] issued under the foregoing sections shall be effective throughout <sup>b</sup>[India].

(2) Subject, in the case of international driving permits issued in pursuance of [any International Convention relative to motor traffic to which the Central Government is for the time being a party], to any rules made by the Central Government under section 92 and subject in any other case to the provisions of sub-section (4), a <sup>a</sup>[driving licence] to drive a motor vehicle issued by a competent authority <sup>d</sup>[in the State of Jammu and Kashmir] <sup>e</sup>[ \* \* \* ] shall, if the holder is ordinarily resident <sup>f</sup>[in that State], be valid throughout <sup>b</sup>[India] as if it were a <sup>a</sup>[driving licence] issued under this Act :

Provided that such holder is not disqualified under any of the provisions of this Act for holding or obtaining a <sup>a</sup>[driving licence] in <sup>b</sup>[India].

(3) A <sup>a</sup>[State Government] may, by rules made under section 21,—

(a) provide that a specification entitling the holder of a <sup>a</sup>[driving licence] to drive a <sup>a</sup>[transport vehicle] shall be made in the <sup>a</sup>[driving licence] only by or under the authority of the Regional Transport Authority constituted under Chapter IV,

(b) regulate the submission of applications for such licences to the said authority, <sup>b</sup>[ \* \* \* ].

<sup>1</sup>[ \* \* \* \* \* ]

(4) If the Central Government is satisfied that licences issued in <sup>b</sup>[India] under this Act are not effective in <sup>d</sup>[the State of Jammu and Kashmir] <sup>e</sup>[ \* \* \* ] or are effective subject to unreasonable conditions or that like conditions and requirements to those imposed by this Act are not imposed in a reasonable degree upon the issue of licences <sup>f</sup>[in the State] <sup>1</sup>[ \* \* \* ], the Central Government shall, by notification in the Official Gazette, declare that licences generally or any particular class of <sup>a</sup>[driving licence] issued in <sup>m</sup>[that State] shall not be valid in <sup>b</sup>[India].

[a] *Substituted* for "licence" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 8 [w. e. f. 16-2-1957]. [b] *Substituted* for "the States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [c] *Substituted* for "the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926, or of any Convention modifying the same", by Act C of 1956, S. 8 [w. e. f. 16-2-1957]. [d] *Substituted* for "in any Part B State", by Act III of 1951, S. 3 and Sch. [1-4-1951]. [e] The words "or in the French or Portuguese Settlements bounded by India" were omitted by Act C of 1956, S. 8 [w. e. f. 16-2-1957]. [f] *Substituted* for the words "in the State or Settlement in which the licence was issued", *ibid.* [g] *Substituted* for "public service vehicle", *ibid.* [h] The word "or" was omitted *ibid.* [i] Clause (c) was omitted, *ibid.* [j] *Substituted* for "any Part B State or", by Act III of 1951, S. 3 and Sch.

[1-4-1951]. [k] *Substituted* for "in any State", *ibid.* [l] The words "or Settlement as aforesaid" were *omitted* by Act C of 1956, S. 8 [w. e. f. 16-2-1957]. [m] *Substituted* for "the State or Settlement", *ibid.*

### \*[10. Currency of driving licence.

A driving licence issued or renewed under this Act shall, subject to the provisions contained in this Act as to the cancellation of driving licences and the disqualification of holders of driving licences for holding or obtaining driving licences, be effective without renewal for a period of three years only, from the date of the issue of the licence or, as the case may be, from the date with effect from which the licence is renewed under section 11; and the driving licence shall be deemed to continue to be effective for a period of thirty days after the date of its expiry.]

[a] *Substituted* for the former section by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 9 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

"It is proposed to raise the period of currency of driving licences from one to three years and to provide that a driving licence shall be renewed from the date of its expiry in the case of applications made within the period of grace and with effect from the date of renewal in the case of applications made after the expiry of that period. The existing sections 10 and 11 make no provision for the renewal of a driving licence which has lapsed for a considerable period of time, e.g., owing to illness or absence abroad. It is desirable to

provide for the continuity of old licences, rather than the issue of a new one in every such case, in order to preserve the previous record of the holder. If the period during which a driving licence has not been renewed is as long as five years, clause 10 [now see S. 11 (3A)] provides that the licensing authority may compel the applicant to undergo a driving test. The period of grace is also being increased from 15 to 30 days."

—S. O. R. of Amending Act C of 1956.

### 11. Renewal of driving licences.

^[(1) Any licensing authority may, on application made to it, renew a licence issued under the provisions of this Act with effect from the date of its expiry :

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal.]

(2) An application for the renewal of a <sup>b</sup>[driving licence] shall be made in Form B as set forth in the First Schedule and shall contain the declaration required by that form; provided that where the applicant does not or is unable to subscribe to the said declaration the provisions of sub-section (5) of section 7 shall apply.

^[(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after, the date of its expiry, the fee payable for such renewal shall be nine rupees.

(3A) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be eleven rupees :

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority, if it is satisfied that the applicant was prevented by good cause from applying within the time specified in that sub-section :

Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes

#### Section 11 — Note 1

[1] Section 11 (3) deals only with the amount to be paid for a renewal of a licence and merely states that the fee for the renewal of a licence, if the application is made previous to or within 15 days subsequent to the date of the expiration of the licence shall be three rupees; if after that date, five rupees.

Therefore it is not correct to say that S. 11 (3) gives 15 days of grace within which period it is unnecessary to apply for a licence. 1942 Mad 196 (197) [AIR V 29] : 43 Cri L Jour 524 \* 1942 Bom 216 (217) [A I R V 29] : 43 Cri L Jour 778 (DB).

to its satisfaction the test of competence to drive specified in the Third Schedule.]

(4) When the authority renewing the <sup>b</sup>[driving licence] is not the authority which issued the <sup>b</sup>[driving licence], it shall intimate the fact of renewal to the authority which issued the <sup>b</sup>[driving licence].

[a] Substituted for the former sub-s. (1), by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 10 [w. e. f. 16-2-1957]. [b] Substituted for "licence", *ibid.* [c] Substituted for the former sub-s. (3), *ibid.*

## 12. Revocation of driving licence on grounds of disease or disability.

Notwithstanding anything contained in the foregoing sections, <sup>a</sup>[any licensing authority] may at any time revoke a <sup>b</sup>[driving licence] <sup>c</sup>[" " "], or may require, as a condition of continuing to hold such <sup>b</sup>[driving licence], the holder thereof to furnish a fresh medical certificate in Form C as set forth in the First Schedule signed as required by sub-section (3) of section 7, if the licensing authority has reasonable grounds to believe that the holder of the <sup>b</sup>[driving licence] is, by virtue of any disease or disability, unfit to drive a motor vehicle <sup>d</sup>[and where the authority revoking a driving licence is not the authority which issued the same, it shall intimate the fact of revocation to the authority which issued that licence].

[a] Substituted for "a licensing authority", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 11 [w. e. f. 16-2-1957]. [b] Substituted for "licence", *ibid.* [c] The words "issued by it" were omitted, *ibid.* [d] Inserted, *ibid.*

### OBJECTS AND REASONS

*Amendments made in 1956.*—"Under section 12, a licensing authority may revoke a licence on grounds of disease or disability only if the licence was issued by it; but if the licence-holder has moved from the place where he obtained the licence, the licensing authority of the area to which he has removed has no such powers. The latter is in the best position

to examine the case and to hear any representations the holder may like to make. This clause provides for such powers, and further provides that the licensing authority, which revokes any licence not issued by it, shall inform the licensing authority which originally issued the licence."

—S. O. R.

## 13. Orders refusing or revoking driving licences and appeals therefrom.

(1) Where <sup>a</sup>[a licensing authority refuses to issue or renew, or revokes, any driving licence, or refuses to add a class of motor vehicle to any driving licence], it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

<sup>b</sup>[(2) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority making the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority making the order.]

<sup>c</sup>[(3) \* \* \* \* \*]

[a] Substituted for "the licensing authority refuses to issue or revokes or refuses to renew any licence", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 12 [w. e. f. 16-2-1957]. [b] Substituted for the original sub-section (2), *ibid.* [c] Sub-section (3) was omitted, *ibid.*

### OBJECTS AND REASONS

*Amendment made in 1956.*—The existing of being heard. The amendment in sub-section 13 (2) gives the licensing authority, tion (2) is designed to clarify the position—but not the aggrieved person, an opportunity S. O. R.

## 14. Licences to drive motor vehicles, the property of the Central Government.

(1) The authority specified in Part A of the Fourth Schedule may grant <sup>a</sup>[driving licences], valid throughout <sup>b</sup>[India], to persons who have completed their eighteenth year to drive motor vehicles which are the property <sup>c</sup>[or for the time being under the exclusive control] of the Central Government <sup>d</sup>[and

are used for Government purposes unconnected with any commercial enterprise.]

(2) A \*[driving licence] issued under this section shall specify the class or classes of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A \*[driving licence] issued under this section shall not entitle the holder to drive any motor vehicle except a motor vehicle which is the property \*[or for the time being under the exclusive control] of the Central Government.

(4) The authority issuing any \*[driving licence] under this section shall at the request of any State Government furnish such information respecting any person to whom a \*[driving licence] is issued as that Government may at any time require.

[a] *Substituted for "licences"*, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956) S. 13 [w. e. f. 16-2-1957]. [b] *Substituted for "the States"*, by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [c] *Inserted by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 5 [3-4-1942]* [d] *Inserted by Act C of 1956, S. 13 [w. e. f. 16-2-1957]*. [e] *Substituted for "licence"*, *ibid.*

### OBJECTS AND REASONS

*Amendment made in 1956.*—The amendment made in section 14 (1) "is designed to make it clear that the provisions of section 14 apply only to motor vehicles used for Government purposes and not to vehicles used for a commercial purpose or in connection with any commercial department of the Central Government."—S. O. R.

## 15. Power of licensing authority to disqualify for holding a driving licence.

(1) If a licensing authority is satisfied after giving him an opportunity of being heard that any person—

(a) is a habitual criminal or a habitual drunkard, or

(b) is using or has used a motor vehicle in the commission of a cognizable offence, or

(c) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public,

it may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period for holding or obtaining a \*[driving licence].

(2) Upon the issue of any such order a person affected, if he is the holder of a \*[driving licence], shall forthwith surrender his \*[driving licence] to the licensing authority making the order, if the \*[driving licence] has not already been surrendered, and the licensing authority shall—

(a) if the \*[driving licence] is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or

(b) if it is not a \*[driving licence] issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

[a] *Substituted for "licence"*, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 14 [w. e. f. 16-2-1957].

## 16. Power of Regional Transport Authority to disqualify.

(1) A Regional Transport Authority constituted under Chapter IV may for reasons to be recorded in writing and subject to any prescribed conditions

### Section 16 — Note 1

[1] The Road Traffic Board cannot suspend the competency certificate of the driver for

the overloading of the bus where the duty of preventing the overload is placed only on the conductor by Rules framed under the Act.

declare any person disqualified, for a specified period, for holding or obtaining a licence to drive \**[a transport vehicle]* in the province.

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (1) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

[a] Substituted for "a public service vehicle", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 15 [w.e.f. 16-2-1957].

## 17. Power of Court to disqualify.

(1) Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used the Court by which such person is convicted may, subject to the provisions of this section, in addition to imposing any other punishment authorized by law, declare the person so convicted to be disqualified, for such period as the Court may specify, for holding any \**[driving licence]* or for holding a \**[driving licence]* to drive a particular class or description of vehicle.

(2) A Court shall not order the disqualification of an offender convicted for the first or second time of an offence punishable under section 115.

(3) A Court shall order the disqualification of an offender convicted of an offence punishable under section 117, and such disqualification shall be for a period of not less than six months.

(4) A Court shall order the disqualification of an offender convicted of an offence against the provisions of clause (c) of sub-section (1) of section 87 or of section 89, and such disqualification shall be for a period of not less than one month.

(5) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of an offender—

(a) who having been convicted of an offence punishable under section 116 is again convicted of an offence punishable under that section ;

(b) who is convicted of an offence punishable under section 120 ; or

(c) who is convicted of an offence punishable under section 123 :

Provided that the period of disqualification shall not exceed, in the cases referred to in clauses (a) and (b), two years, or, in the case referred to in clause (c), one year.

(6) A Court ordering the disqualification of an offender convicted of an offence punishable under section 116 may direct that the offender shall, whether he has previously passed the test of competence to drive specified in the

### Section 16 — Note 1 (contd.)

1957 Trav-Co 141 (143, 144) [AIR V 44 C 44];  
ILR (1956) Trav-Co 1293 (DB).

### Section 17 — Note 1

[1] The best way to stop dangerous driving by persons who earn their livelihood by driving motor vehicles is for the Court, on the conviction of the offender, to cause particulars of the conviction to be endorsed on the licence held by the accused and cancel or suspend that licence or to declare the accused disqualified for obtaining a licence either permanently or for such period as it thinks fit. 1925 Bom 526 (526) [AIR V 12] : 26 Cri L Jour 1536 (DB).

[2] Where the accused had been driving cars regularly for about 13 years and had obtained a large number of good certificates from a variety of masters, and where he had never before had a conviction for bad driving held that the verdict that he was unfit to

a licence because he was not a good driver was ridiculous in view of his record and must be cancelled. 1925 All 798 (800) [AIR V 12] : 26 Cri L Jour 1254.

[3] Although S. 17 does not expressly provide so a driver can be disqualified under the section for holding a licence even where he is convicted for an infraction of the statutory Motor Vehicles Rules. 1955 Cal 567 (569) [(S) AIR V 42 C 176] : 1955 Cri L Jour 1477. (Person convicted under S. 112 for violation of R. 90 (b) of Bengal Motor Vehicles Rules.)

[4] The punishment which has to be specified under S. 367 (2), Criminal P. C., cannot include an order of disqualification for holding a driving licence. Hence no appeal lies from a conviction under Ss. 78, 86 and 116, Motor Vehicles Act, when the sentence is of fine of Rs. 45 and disqualification to hold licence for three months. 1945 Mad 27 (28) [AIR V 32] : 1 L R (1945) Mad 315 : 46 Cri L Jour 300.



Third Schedule or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(7) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from any Court may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

[a] *Substituted* for "licence", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 16 [w.e.f. 16-2-1957].

## 18. Effect of disqualification order.

(1) A person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order from holding or obtaining a <sup>a</sup>[driving licence] and the <sup>a</sup>[driving licence], if any, held by such person at the date of the order shall cease to be effective during such period.

(2) The operation of a disqualification order made under section 17 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either remove or vary the order of disqualification :

Provided that where an application has been made under this section a second application thereunder shall not be entertained before the expiry of a further period of three months.

[a] *Substituted* for "licence," by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 16 [w.e.f. 16-2-1957].

## 19. Endorsement.

(1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the <sup>a</sup>[driving licence], if any, held by the person disqualified particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any removal or variation of an order of disqualification made under sub-section (3) of section 18 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence specified in the Fifth Schedule shall, whether or not an order of disqualification is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any <sup>a</sup>[driving licence] held by the person convicted.

(3) Any person accused of an offence specified in the Fifth Schedule shall when attending the Court bring with him his <sup>a</sup>[driving licence] if it is in his possession.

[a] *Substituted* for "licence," by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 16 [w.e.f. 16-2-1957].

## 20. Transfer of endorsement and issue of driving licence free from endorsement.

(1) An endorsement on any <sup>a</sup>[driving licence] shall be transferred to any new or duplicate <sup>a</sup>[driving licence] obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a <sup>a</sup>[driving licence] issued to him free from endorsement.

(2) Where a <sup>a</sup>[driving licence] is required to be endorsed and the <sup>a</sup>[driving



licence] is at the time not in the possession of the Court or authority by which the endorsement is to be made then—

(a) if the person in respect of whom the endorsement is to be made is at the time the holder of a \*[driving licence], he shall produce the \*[driving licence] to the Court or authority within five days, or such longer time as the Court or authority may fix, or

(b) if, not being then the holder of a \*[driving licence], he subsequently obtains a \*[driving licence], he shall within five days after obtaining the \*[driving licence] produce it to the Court or authority;

and if the \*[driving licence] is not produced within the time specified it shall on the expiration of such time be of no effect until it is produced for the purpose of endorsement.

(3) A person whose \*[driving licence] has been endorsed shall, if during a continuous period of three years since the last endorsement was made no further order of endorsement has been made against him, be entitled, on surrendering his \*[driving licence] and on payment of a fee of five rupees, to receive a new \*[driving licence] free from all endorsements. If the endorsement was only in respect of exceeding a speed limit, he shall be entitled to have a clean \*[driving licence] issued on the expiration of one year from the date of the order:

Provided that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a \*[driving licence] shall be excluded.

(4) When a \*[driving licence] is endorsed by or an order of endorsement is made by any Court, the Court shall send particulars of the endorsement or order, as the case may be, to the licensing authority by which the \*[driving licence] was last renewed and to the licensing authority which granted the \*[driving licence].

(5) Where the holder of a \*[driving licence] is disqualified by the order of any Court for holding or obtaining a \*[driving licence], the Court shall take possession of the \*[driving licence] and forward it to the licensing authority by which it was granted or last renewed and that authority shall keep the \*[driving licence] until the disqualification has expired or has been removed and the person entitled to the \*[driving licence] has made a demand in writing for its return to him:

Provided that, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, the Court shall endorse the \*[driving licence] to this effect and shall send a copy of the order of disqualification to the licensing authority by which the \*[driving licence] was granted and shall return the \*[driving licence] to the holder.

(6) Where on an appeal against any conviction or order of a Court which has been endorsed on a licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the \*[driving licence] was last renewed and the licensing authority which granted the \*[driving licence], and shall amend or cause to be amended the endorsement of such conviction or order.

[a] *Substituted* for "licence" by the Motor Vehicles (Amendment) Act, 1958 (C of 1958), S. 16 [16-2-1957].

## 21. Power to make rules.

(1) A \*[State Government] may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities;

- \*[(aa) the conduct of persons to whom licences to drive transport vehicles or contract carriages are issued;]
- <sup>b</sup>[(b) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees:

Provided that no fee so fixed shall exceed two rupees;]

- (c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete, and the issue of temporary licences to persons receiving instruction in driving "[or to persons whose driving licences have been surrendered], and the fees to be charged therefor;
- (d) the conditions subject to which a Regional Transport Authority may disqualify a person for holding a <sup>d</sup>[driving licence] to drive a <sup>e</sup>[transport vehicle];
- <sup>f</sup>[(dd) the badges and uniform to be worn by drivers of stage carriages or contract carriages and the fees to be paid in respect of badges;]
- (e) the medical examination and testing of applicants for licences and of drivers and the fees to be charged therefor;
- <sup>g</sup>[(f) the exemption of prescribed persons, or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;]
- (g) the granting by registered medical practitioners of the certificates referred to in sub-section (3) of section 7;
- (h) the communication of particulars of licences granted by one licensing authority to other licensing authorities;
- (i) the control of schools or establishments for the instruction of drivers of motor vehicles and the acceptance of driving certificates issued by such schools or establishments as qualifying the holder for exemption from Part I of the test specified in the Third Schedule;
- (j) the exemptions of drivers of road-rollers from all or any of the provisions of this Chapter or of the rules made thereunder ; and
- (k) any other matter which is to be or may be prescribed.

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 17 [w. e. f. 1-8-1957]. [b] *Substituted* for the original clause, *ibid.* 1942 (XX of 1942), S. 6 [3-4-1942]. [c] *Inserted* by Act C of 1956, S. 17 [w. e. f. 16-2-1957]. [d] *Substituted* for "licence", by Act C of 1956, S. 17 [w. e. f. 16-2-1957]. [e] *Substituted* for "public service vehicle" *Ibid.* [f] *Inserted*, *ibid.*, S. 17 [w. e. f. 1-8-1957]. [g] *Substituted* for the original clause, by Act XX of 1942, S. 6 [3-4-1942].

## CHAPTER IIA\*

[NOTE.—"At present, the grant of conductor's licence is governed by the rule-making power of the State Governments under sub-section (1) of section 87. With the latest developments in the field of public passenger transport, the role of conductors has become as important as that of drivers. It has, therefore, been found necessary to make substantive provisions for the licensing of conductors of stage carriages in order to exercise certain measure of control over their employment and work. With this end in view, a new Chapter IIA, consisting of ten sections, is proposed to be introduced. Only the minimum necessary provisions are included in this Chapter, the details being left to the rule-making power of the State Governments. The provisions are generally based on the corresponding provisions in Chapter II relating to licensing of drivers."—S. O. R.]

### LICENSING OF CONDUCTORS OF STAGE CARRIAGES

#### 21A. Necessity for conductor's licence.

(1) No person shall act as a conductor of a stage carriage unless he holds an effective conductor's licence issued to him authorizing him to act as such conductor; and no person shall employ or permit any person who is not so licensed to act as a conductor of a stage carriage.

(2) A State Government may prescribe the conditions subject to which sub-section (1) shall not apply to a driver of a stage carriage performing the functions of a conductor or to a person employed to act as a conductor for a period not exceeding one month.

[a] Chapter IIA, containing sections 21A to 21J, was inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 18 [w.e.f. 1-8-1957].

## **21B. Grant of conductor's licence.**

(1) Any person who is not disqualified under sub-section (1) of section 21C and who is not for the time being disqualified for holding or obtaining a conductor's licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business for the issue to him of a conductor's licence.

(2) Every application under sub-section (1) shall be in such form as may be prescribed and shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Every application for a conductor's licence shall be accompanied by a medical certificate in such form as may be prescribed, signed by a registered medical practitioner and shall also be accompanied by two clear copies of a recent photograph of the applicant.

(4) A conductor's licence issued under this Chapter shall be in such form and contain such particulars as may be prescribed.

(5) The fee for a conductor's licence and for each renewal thereof shall be one-half of that for a driving licence.

## **21C. Disqualifications for the grant of conductor's licence.**

(1) No person under the age of eighteen years shall hold, or be granted, a conductor's licence.

(2) The licensing authority may refuse to grant a conductor's licence—

(a) if the applicant does not possess the prescribed qualifications;

(b) if the medical certificate produced by the applicant discloses that he is physically unfit to act as a conductor; and

(c) if any previous conductor's licence held by the applicant was revoked.

## **21D. Revocation of a conductor's licence on grounds of disease or disability.**

A conductor's licence may at any time be revoked by any licensing authority or any Regional Transport Authority constituted under Chapter IV, if the authority has reasonable grounds to believe that the holder of the licence is suffering from any disease or disability which is likely to render him permanently unfit to hold such a licence and where the authority revoking a conductor's licence is not the authority which issued the same, it shall intimate the fact of revocation to the authority which issued that licence.

## **21E. Orders refusing, etc., conductor's licences and appeals therefrom.**

(1) Where a licensing authority refuses to issue or renew, or revokes any conductor's licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority making the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority making the order.

## **21F. Power of licensing authority and Regional Transport Authority to disqualify.**

(1) If any licensing authority or any Regional Transport Authority constituted under Chapter IV is of opinion that it is necessary to disqualify the holder of a conductor's licence for holding or obtaining such a licence on account of his previous conduct as a conductor, it may, for reasons to be recorded, make an order disqualifying that person for a specified period, not exceeding one year, for holding or obtaining a conductor's licence.

(2) Upon the issue of any such order, the holder of the conductor's licence shall forthwith surrender the licence to the authority making the order, if the licence has not already been surrendered, and the authority shall keep the licence until the disqualification has expired or has been removed.

(3) Where the authority disqualifying the holder of a conductor's licence under this section is not the authority which issued the licence, it shall intimate the fact of such disqualification to the authority which issued the same.

(4) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority making the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority making the order.

## **21G. Power of Court to disqualify.**

(1) Where any person holding a conductor's licence is convicted of an offence under this Act, the Court by which such person is convicted may, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified for such period as the Court may specify for holding a conductor's licence.

(2) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from the Court below, may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

## **21H. Certain provisions of Chapter II to apply to conductor's licence.**

The provisions of sub-section (2) of section 6, sub-section (1) of section 9, sections 10, 11 and 18, sub-section (1) of section 19 and section 20 shall, so far as may be, apply in relation to a conductor's licence, as they apply in relation to a driving licence.

## **21I. Savings.**

If any licence to act as a conductor of a stage carriage (by whatever name called) has been issued by any State Government and is effective immediately before the commencement of this Chapter in that State, it shall continue to be effective, notwithstanding such commencement, for the period for which it would have been effective, if the Motor Vehicles (Amendment) Act, 1956, had not been passed, and every such licence shall be deemed to be a licence issued under this Chapter as if this Chapter had been in force on the date on which that licence was granted.

## **21J. Power to make rules.**

(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities under this Chapter;

(b) the conditions subject to which drivers of stage carriages and persons

temporarily employed may be exempted from the provisions of this Chapter;

- (c) the form of application for conductor's licences or for renewal of such licences and the particulars it may contain;
- (d) the form in which conductor's licences may be issued or renewed and the particulars it may contain;
- (e) the minimum qualifications of conductors; their duties and functions and the conduct of persons to whom conductor's licences are issued;
- (f) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete and the fees to be charged therefor;
- (g) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund to such fees;

Provided that no fee so fixed shall exceed two rupees;

- (h) the badges and uniform to be worn by conductors of stage carriages and the fees to be paid in respect of such badges;
- (i) the granting by registered medical practitioners of the certificates referred to in sub-section (3) of section 21B and the form of such certificates;
- (j) the communication of particulars of conductor's licences from one authority to other authorities; and
- (k) any other matter which is to be, or may be, prescribed.

### CHAPTER III

#### REGISTRATION OF MOTOR VEHICLES

#### 22. Necessity for registration.

(1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

\*[(2) • • • • •]

[a] Sub-section (2) was omitted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 19 [w. e. f. 16-2-1957].

#### Section 22 — Note 1

[1] Section 22 of the Act read with Rule 26 of the U. P. Motor Vehicles Rules makes it clear that a trailer which is a motor vehicle within the definition in S. 2 (18) has to bear the registration mark. When it is attached to a drawing motor vehicle, then the registration mark of the drawing motor vehicle should also be affixed to it as in the case of the motor vehicle itself. S. 40 (2) does not warrant the conclusion that an exception from the requirements of S. 22 is made in the case of those trailers which are attached to a driving vehicle. (58) ILR (1958) 2 All 631 (633, 634, 635).

[2] A motor vehicle shall not be deemed to be duly registered as required by the provisions of S. 22 unless it has a certificate of fitness also granted under S. 38 which is current at the moment. 1959 All 489 (491) [AIR V 46 C 123].

[9] An owner who carries in his private car goods or luggage for his own use does not contravene the provisions of S. 22 on the

ground that the car has no certificate of fitness required under S. 38. Section 38 has no application to private cars. 1959 Mys 221 (222) [AIR V 46 C 88]; 1959 Cri L Jour 1095.

[4] The transferee who does not get the transfer recorded on the registration certificate within the time prescribed by S. 31 but continues to drive the vehicle or causes it to be driven after the expiry of the grace period will be liable to prosecution and punishment under S. 22 (1) read with S. 112. 1959 Raj 175 (177) [AIR V 46 C 66]; 11 LR (1959) 9 Raj 419.

[5] If a lorry is permitted to be driven on a particular day without registration and permit contrary to the provisions of Ss. 22 (1) and 42 (1), Motor Vehicles Act, the owner cannot be charged for a number of separate offences, although it is seen at different places on the same day. The offence is using the lorry on the particular day and it is only one offence. 1942 Lah 125 (126) [AIR V 29]; 43 Cri L Jour 673. 11LR (1943) Lah 106 (DB).



and any vehicle so registered shall not, so long as it remains the property of any diplomatic officer or consular officer, require to be registered otherwise under this Act.

(2) If any vehicle registered under this section ceases to be the property of any diplomatic officer or consular officer, the certificate of registration issued under this section shall also cease to be effective, and the provisions of section 23 shall thereupon apply.

(3) The Central Government may make rules<sup>b</sup> for the registration of motor vehicles belonging to diplomatic officers and consular officers regarding the procedure to be followed by the registering authority for registering such vehicles, the form in which certificates of registration of such vehicles are to be issued, the manner in which certificates of registration are to be sent to the owners of the vehicles and the special registration marks to be assigned to such vehicles.

(4) For the purposes of this section, 'diplomatic officer' or 'consular officer' means any person who is recognized as such by the Central Government and if any question arises as to whether a person is or is not such an officer, the decision of the Central Government thereon shall be final.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 22 [w. e. f. 1-6-1960]. [b] The Motor Vehicles (Diplomatic and Consular Officers Vehicles) Registration Rules, 1960 [1-6-1960], S. O. 1047 dated 26-4-1960 published in Gaz. of Ind., 1960, Pt. II-Sec. 3 (ii), page 1358.

### OBJECTS AND REASONS

"The present practice in regard to registration of motor vehicles belonging to diplomatic staff is not wholly satisfactory. In order to avoid inconvenience to such staff, it is proposed to lay down a special procedure for the registration of motor vehicles belonging to

them. This is in conformity with the practice obtaining in some other countries." This section "is intended to provide for a special series of registration numbers for such vehicles and also to exercise control over their transfer to non-diplomatic personnel."—S.O.R.

### 25. Temporary registration.

(1) Notwithstanding anything contained in section 23, the owner of a motor vehicle may apply to any registering authority <sup>a</sup>[or other prescribed authority] to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 23 [w. e. f. 16-2-1957].

### 26. Production of vehicle at time of registration.

<sup>a</sup>[(1)] The registering <sup>b</sup>[authority shall before] proceeding to register a motor vehicle require the person applying for registration of the vehicle to produce the vehicle either before itself or such authority as the State Government may by order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of Chapter V and of the rules made thereunder.

<sup>c</sup>[(2)] Nothing in sub-section (1) shall apply to any motor vehicle owned by or on behalf of the Government.]

[a] Section 26 was renumbered as sub-section (1) of that section by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 24 [w. e. f. 16-2-1957]. [b] *Substituted* for "authority may before", *ibid.*, [w. e. f. 16-2-1957]. [c] *Inserted, ibid.*, [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

*Amendments made in 1956* — "At present, it is discretionary with the registering authority to require the physical production of motor vehicles for inspection, before it proceeds to

register it. It has been noticed that undue advantage is being taken of this provision and dealers in motor vehicles situated in other States are evading payment of sales-tax on

motor vehicles purchased in a particular State. It is, therefore, proposed to make physical production of motor vehicles compulsory before registration. Provision has, however,

been made [in sub-section (2)] for the exemption of motor vehicles owned by or on behalf of Government from the requirement relating to compulsory physical production."—S.O.R.

## 27. Refusal of registration.

The registering authority may refuse to register any motor vehicle if the vehicle is mechanically defective or fails to comply with the requirements of Chapter V or of the rules made thereunder, or if the applicant fails to furnish particulars of any previous registration of the vehicle, and it shall furnish the applicant whose vehicle is refused registration with the reasons in writing for such refusal.

## 28. Effectiveness in India of registration.

(1) Subject to the provisions of section 29, a motor vehicle registered in accordance with this Chapter in any <sup>a</sup>[State] <sup>a</sup>[ ] shall not require to be registered <sup>b</sup>[elsewhere in India] and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout <sup>c</sup>[India].

<sup>d</sup>[\* \* \* \* \*].

(2) Subject in the case of international motor vehicle certificates issued in pursuance of <sup>e</sup>[any international convention relative to motor traffic to which the Central Government is for the time being a party], to any rules made by the Central Government under section 92, and subject in any other case to the provisions of <sup>f</sup>[\* \* \*] <sup>g</sup>[\* \* \*] sub-section (3) and sub-section (4) of this section, a motor vehicle registered by a competent authority in <sup>h</sup>[the State of Jammu and Kashmir] <sup>i</sup>[\* \* \*] shall not require to be registered in <sup>c</sup>[India] :

<sup>j</sup>[Provided that there is in force in respect of the vehicle a certificate issued by the competent authority conforming to and containing substantially the same particulars as a certificate of registration in Form G as set forth in the First Schedule and that such certificate does not assign to the vehicle a standard of performance in any respect materially greater than that assignable or permissible under this Act or the rules made thereunder for a motor vehicle of like make and model in the State in which the vehicle is to be driven.]

(3) A certificate complying with the requirements of the proviso to sub-section (2) shall be effective throughout <sup>c</sup>[India] <sup>k</sup>[and the provisions of this Act shall be applicable thereto] as if it were a certificate of registration issued under this Act.

(4) Sub-section (2) shall not apply to any motor vehicle previously registered in <sup>c</sup>[India], if the certificate of registration of the vehicle in <sup>c</sup>[India] is for the time being suspended or cancelled for any reason other than that of permanent removal of the vehicle from <sup>c</sup>[India].

(5) If at any time the Central Government is satisfied that motor vehicles registered in <sup>c</sup>[India] under this Act are not permitted to be driven in <sup>l</sup>[the State of Jammu and Kashmir] <sup>m</sup>[\* \* \*] without fresh <sup>n</sup>[registration in the State] <sup>o</sup>[\* \* \*] or are permitted to be driven only subject to unreasonable conditions or that like conditions and requirements to those imposed under this Act (including the specification of the particulars required by Form G as set forth in the First Schedule) are not imposed in a reasonable degree upon the issue and for the continued effectiveness of certificates of <sup>p</sup>[registration in the State] <sup>q</sup>[\* \* \*] as aforesaid, the Central Government shall, by notification in the Official Gazette, declare that certificates of registration generally or in

### Section 27 — Note 1

[1] An order refusing to record the transfer of ownership on a registration certificate as required by S. 31 should be deemed to be an

order passed under S. 27 of the Act which is appealable under S. 35. 1959 Raj 175 (177) [AIR V 46 C 66] : ILR (1959) 9 Raj 419.



respect of any particular class of motor vehicle "issued in the State" [\* \* \*] shall not be effective in "India].

[a] The words "or deemed to be registered under this Act" were omitted by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 8. [3-4-1942.] [b] Substituted for "in any other Province", by A. L. O., 1950. [c] Substituted for "the States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule. [1-4-1951.] [d] Proviso was omitted by Act XX of 1942, S. 8. [3-4-1942.] [e] Substituted for "the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926, or of any convention modifying the same", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 25. [w. e. f. 16-2-1957.] [f] The words, brackets and figure "subsection (1) of" were omitted by the Repealing and Amending Act 1945 (VI of 1945), S. 3 and Schedule II. [16-4-1945.] [g] The words and figures "section 23 and" were omitted by Act C of 1956, S. 25. [w. e. f. 16-2-1957.] [h] Substituted for "any Part B State", by Act III of 1951, S. 3 and Schedule. [1-4-1951.] [i] The words "or in the French or Portuguese Settlements bounded by India" were omitted by Act C of 1956, S. 25. [w. e. f. 16-2-1957.] [j] Substituted for original Proviso, *ibid.* [k] Inserted, *ibid.* [l] Substituted for "any Part B State or", by Act III of 1951, S. 3 and Sch. [1-4-1951.] [m] The words "or any French or Portuguese Settlement" were omitted by Act C of 1956, S. 25. [w. e. f. 16-2-1957.] [n] Substituted for "registration in such State", by Act III of 1951, S. 3 and Schedule. [1-4-1951.] [o] The words "or Settlement" were omitted by Act C of 1956, S. 25. [w. e. f. 16-2-1957.] [p] Substituted for "registration in any State", by Act III of 1951, S. 3 and Schedule. [1-4-1951.] [q] Substituted for "in any such State", *ibid.*

## 29. Assignment of fresh registration mark on removal to another State.

(1) "When a motor vehicle—

(a) registered in one State has been kept in another State, or

(b) registered in the State of Jammu and Kashmir has been kept in India, for a period exceeding twelve months,] the owner of the vehicle shall apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority.

(2) The registering authority, to which application is made under subsection (1), shall assign the vehicle a registration mark in accordance with the Sixth Schedule to be carried thenceforth on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) A State Government may make rules under section 41 requiring the owner of a motor vehicle not registered within the State, which is brought into or is for the time being in the State, to furnish to a prescribed authority in the State such information with respect to the motor vehicle and its registration as may be prescribed.

[a] Substituted for the words "when a motor vehicle registered in one State has been kept in another State for a period exceeding twelve months" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), section 26. [w. e. f. 16-2-1957.]

### OBJECTS AND REASONS

Amendments made in 1956 in sections 28 and 29. — "Under section 28 of the Act, a motor vehicle registered in the State of Jammu and Kashmir, which is transferred permanently to India, requires fresh registration in accordance with the provisions of section 23. It is proposed to liberalise the existing provision in the case of a vehicle registered in that State,

so as to enable such a vehicle to be governed by section 29, that is, although registration will not be required, fresh registration mark will be allotted. Suitable safeguards are being provided so as to ensure that certificates of registration issued in Jammu and Kashmir are recognised only if they conform substantially to the legal requirements in India."—S. O. R.

## \*[29A. Transitional provision regarding assignment of fresh registration mark on account of States' reorganisation.

Where a motor vehicle registered in a State before the 1st November, 1956, has been assigned a registration mark, which, by reason of the transfer of the whole or any part of that State to another State, has ceased on that day to be

in accordance with the Sixth Schedule, then, notwithstanding anything contained in sub-section (1) of section 29, the owner of the vehicle shall, within a period of twelve months from that day, apply to the registering authority within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority; and thereupon, the other provisions of section 29 shall apply to the vehicle as they apply to a motor vehicle on removal from one State to another State.]

[a] Inserted by 3 A. L.O., 1956.

#### STATE AMENDMENT

#### SECTION 29-B

##### GUJARAT

After section 29-A, insert the following section, namely,—

"29B. *Transitional provisions regarding assignment of new registration marks on account of State of Gujarat.*—Where a motor vehicle registered—

- (a) in the State of Bombay before 1st May 1960, or
- (b) in the State of Gujarat on or after 1st May 1960 but before the commencement of the Motor Vehicles Act and Rules (Gujarat (First) Adaptation) Order, 1960, (hereinafter referred to as "the Adaptation Order") has been assigned a registration mark—
  - (i) which, in the case of (a), by reason of the place of registration being in the territories forming part of the State of Gujarat on 1st May 1960, or
  - (ii) which, in the case of (b), by reason of the fact that the Adaptation Order was not then made, had ceased on the commencement of the Adaptation Order to be in accordance with the Sixth Schedule,

then notwithstanding anything contained in sub-section (1) of section 29, the owner of the vehicle shall, before the end of 31st March, 1961, apply to the registering authority within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority; and thereupon the other provisions of section 29 shall, so far as may be, apply to the assignment of a new registration mark."

—Guj. A. O., 1960, [28-7-1960]: Guj. Govt. Gaz., 1960, Pt. IVA, page 38.

#### 30. Change of residence or place of business.

(1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the certificate of registration of the vehicle, he shall, within thirty days of any such change of address, intimate his new address to the registering authority by which the certificate of registration was issued, or, if the new address is within the jurisdiction of another registering authority, to that other registering authority, and shall at the same time forward the certificate of registration to the registering authority in order that the new address may be entered therein.

(2) A registering authority other than the original registering authority<sup>a</sup> making any such entry shall communicate the altered address to the original registering authority."

(3) Nothing in sub-section (1) shall apply where the change of the address recorded in the certificate of registration is due to a temporary absence not intended to exceed six months in duration or where the motor vehicle is neither used nor removed from the address recorded in the certificate of registration.

[a] For meaning of the expression "original registering authority" see S. 34 (7).

#### 31. Transfer of ownership.

<sup>a</sup>[(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,—

- (a) the transferor shall, within fourteen days of the transfer, report the transfer to the registering authority within whose jurisdiction the transfer is

##### Section 31 — Note 1

[1] Under S. 31, Motor Vehicles Act, it is the duty of the transferee within 30 days of the transfer of ownership of a vehicle to notify the registering authority of the fact of transfer and request him to effect the transfer in his

favour. The certificate of registration has to be submitted to the registering authority along with the prescribed fee etc. Where, therefore the transferee fails to make any such application the transferor cannot be blamed if the registration is not transferred in favour of the

effected and shall simultaneously send a copy of the said report to the transferee;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.]

(2) A registering authority other than the original registering authority<sup>b</sup> making any such entry shall communicate the transfer of ownership to the original registering authority.<sup>b</sup>

[a] Substituted for the original sub-section by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 27 [w. e. f. 16-2-1957]. [b] For the meaning of the expression "original registering authority" see section 34 (7).

### \*[32. Alteration in motor vehicle.

(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless—

(a) he has given notice to the registering authority within whose jurisdiction he resides of the alteration he proposes to make; and

(b) he has obtained the approval of the registering authority to make such alteration :

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent. of the weight entered in the certificate of registration.

#### Section 31 — Note 1 (contd.)

transferee. 1956 Him-Pra 28 (32) [A I R V 43 C 13] + (1957) 1957 Mad W N 429 (430). (After transfer the transferor cannot be held liable for payment of tax under the Madras Motor Vehicles Taxation Act merely because his name continues to be on the register as the owner due to the default of the transferee to apply for the transfer of the registration.)

[2] The application of a transferee made after thirty days of transfer for recording of the transfer on registration certificate cannot be held time-barred because the period of thirty days is not the period of limitation but is the period of grace within which period the transferee can drive the vehicle or cause it to be driven without getting the transfer recorded. 1959 Raj 175 (177) [A I R V 46 C 66] : I L R (1959) 9 Raj 419.

[3] Section 31 does not contemplate any inquiry into the question of the genuineness or the validity of a transfer by the Registering authority before recording the transfer. If the registration certificate of the vehicle is produced by a person who alleges to be the transferee the registering authority has no option but to record the transfer even though the transfer is disputed. 1959 Raj 175 (177) [A I R V 46 C 66] : I L R (1959) 9 Raj 419.

[4] The question of transferring the registration under this section in favour of a purchaser can arise only where there is a completed sale of the vehicle and therefore the transfer of the registration cannot constitute

a condition precedent to the completion of the sale. 1956 Him Pra 28 (32) [A I R V 43 C 13].

[5] An order refusing to record the transfer of ownership on the registration certificate under this section amounts to an order under S. 27 which is appealable under S. 35. 1959 Raj 175 (177) [A I R V 46 C 66] : I L R (1959) 9 Raj 419.

#### Section 32 — Note 1

[1] The accused was prosecuted under S. 32 (1) and also under Ss. 38 (1) and 42 (1), for having used his car as a transport vehicle for carrying goods without the necessary fitness certificate and permit but he was acquitted on the charge under S. 32 (1). Thereupon he contended that as a result of that acquittal the case under the latter sections also became unsustainable. It was held that the contention was not correct. The acquittal only indicated that there was no structural alteration after the issue of the certificate of registration and not that there was no structural alteration in the car at any time after it came out of the manufacturer's shop. Further as there was in addition a finding that the accused had actually used the car for transporting goods the convictions under Ss. 38 and 42 in spite of his acquittal under S. 32 (1) cannot be said to be unjustified. 1943 Mad 720 (721) [A I R V 30] : 45 Cri L Jour 94.

(2) Where a registering authority has received notice under sub-section (1), it shall, within seven days of the receipt thereof, communicate, by post, to the owner of the vehicle its approval to the proposed alteration or otherwise :

Provided that where the owner of the motor vehicle has not received any such communication within the said period of seven days, the approval of such authority to the proposed alteration shall be deemed to have been given.

(3) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, the owners of not less than ten transport vehicles to alter any vehicle owned by them so as to change its engine number by replacing the engine thereof without the approval of the registering authority.

(4) Where any alteration has been made in a motor vehicle either with the approval of the registering authority given or deemed to have been given under sub-section (2) or by reason of any change in its engine number without such approval under sub-section (3), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(5) A registering authority other than the original registering authority<sup>b</sup> making any such entry shall communicate the details of the entry to the original registering authority.<sup>b</sup>

[a] Sections 32 and 32A were substituted for the original S. 32, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 28 [w. e. f. 16.2.1957]. [b] For the meaning of the expression "original registering authority" see section 34 (7).

### OBJECTS AND REASONS

Sections 32 and 32A.—"Section 32 of the Act requires the owner of a vehicle to report to the registering authority any alteration made in a vehicle which renders the particulars entered in the certificate of registration inaccurate. It has been noticed that owners of motor vehicles do not generally comply with this requirement. It is, therefore, proposed to provide that prior approval of the registering authority concerned should be obtained before any alterations are made in a motor vehicle. A relaxation has, however, been proposed in the case of owners of not less than ten vehicles, who will be authorised to replace the engines whenever a major overhaul

is necessary. This relaxation is necessary in order to avoid unnecessary correspondence regarding the change of engine assemblies. But even such owners will have to report to the registering authority the alterations made in their vehicles within fourteen days of making them.

As certificates of registration do not require renewal, it is necessary to empower the State Governments to call them up for the entry of new particulars regarding colours, etc. The proposed section 32A gives the State Government the necessary powers."

—S. O. R.

### <sup>a</sup>[32A. Power of State Government to require the production of certificates of registration in certain cases.

Where a State Government is of opinion that particulars relating to the colour or colours of the body, wings and front end of any class of motor vehicles registered before the commencement of the Motor Vehicles (Amendment) Act, 1956, should be entered in the certificates of registration relating to such vehicles the State Government may, by notification in the Official Gazette, require the owners of such class of motor vehicles to produce their certificates of registration before the registering authority within such time as may be specified in the notification.]

[a] See Foot-note (a) under S. 32.

### 33. Suspension of registration.

<sup>a</sup>[(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

(a) is in such a condition that its use in a public place would constitute a

danger to the public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such,

the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle—

(i) in any case falling under clause (a), until the defects are remedied to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.]

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority<sup>b</sup>, inform that authority of the suspension; and when the suspension has continued without interruption for a period of not less than six months, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority<sup>b</sup>, cancel the registration, and, if it is not the original registering authority<sup>b</sup>, shall forward the certificate of registration to that authority which may cancel it forthwith.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place.

(5) A certificate of registration and any token or card surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

[a] Substituted for the original sub-section (1), by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 29 (w. e. f. 16.2.1957). [b] For the meaning of the expression "original registering authority" see section 34 (7).

### OBJECTS AND REASONS

*Sub-section (1) as substituted in 1956* — "At present, the power to suspend the certificate of registration can be exercised only when a vehicle is in such a condition that its use in a public place would constitute a danger to the public, or if the vehicle fails to comply with the requirements of Chapter V of the Act and rules framed thereunder relating to the construction, equipment and maintenance of motor vehicles. There is an increasing tendency on the part of owners of vehicles (particularly private cars) to use them without a valid permit for the carriage of passengers for hire or reward. In order to check this growing abuse, it is proposed to empower the registering or other prescribed authorities to

suspend the registration certificate of a vehicle engaged in operation for hire or reward without a valid permit for a period not exceeding four months.

"Under the existing provisions of section 33, a registering authority has to give the owner of a motor vehicle an opportunity to make a representation before he suspends the certificate of registration in respect of the vehicle. In practice, the owner is often untraceable and many unnecessary formalities have to be observed. This clause [that is, S. 29 of the Amending Act 100 of 1956] provides that the registering authority shall take only such action as is reasonably possible to trace the owner. . . ." — S. O. R.

## STATE AMENDMENTS

## MAHARASHTRA

In its application to the State of Bombay, in section 33—:

(1) for sub-section (1) substitute the following, namely,—

"(1) If a registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

- (i) is in such a condition that its use in a public place would constitute a danger to the public,
- (ii) fails to comply with the requirements of Chapter V or of the rules made thereunder, or
- (iii) is being used as a public service vehicle without a valid permit authorising its use as such vehicle,

such authority may, after giving the owner an opportunity of making any representation he may wish to make, for reasons to be recorded in writing, suspend the certificate of registration of the vehicle,—

- (a) in cases falling under clause (i) or clause (ii), until the defects are remedied to its satisfaction;
- (b) in cases falling under clause (iii), for such period not exceeding four months as it may deem fit."

(2) in sub-section (3) for the words "and when the suspension has continued" substitute the words, brackets and figures "and in cases falling under clause (i) or clause (ii) of sub-section (1) when the suspension has continued".

Bom. Act XXXI of 1954, S. 2 [3-5-1954].

*Note.*—This amendment was made before the substitution of sub-section (1) by the Central Act C of 1956.

## UTTAR PRADESH

In its application to the whole of Uttar Pradesh, in sub-section (1)—

- (a) after the words "rules made thereunder" the words "or that any motor vehicle is being used as a public service vehicle without a valid permit for being used as such" shall be inserted, and
- (b) at the end of the said sub-section, the words "or, in the case of a motor vehicle being used without a valid permit as a public service vehicle for a period not exceeding four months" shall be added.

U. P. Act XXVIII of 1953, S. 2 [23-10-1953].

*Note.*—This amendment was made before the substitution of sub-section (1) by the Central Act C of 1956.

**34. Cancellation of registration.**

(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he resides and shall forward to that authority the certificate of registration of the vehicle together with any token or card issued to authorise the use of the vehicle in a public place.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration and the certificate of registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the <sup>a</sup>[State Government] may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make <sup>a</sup>[(by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration)] it is satisfied that the vehicle is in such a condition that <sup>a</sup>[it is incapable of being used or] its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration of the vehicle.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of <sup>b</sup>[India], the registering authority shall cancel the registration.

(5) A registering authority cancelling the registration of a motor vehicle under section 33 or under this section shall communicate the fact in writing to the owner of the vehicle and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle and any token or card issued to authorise the use of the vehicle in a public place.

(6) A registering authority making an order of cancellation under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(7) The expression "original registering authority" in this section and in sections 30, 31, 32 and 33 means the registering authority" in whose records the registration of the vehicle is recorded.

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 30 [w. e. f. 16-2-1957].* [b] *Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].*

### 35. Appeals.

(1) Any owner of a motor vehicle aggrieved by an order of refusal under section 27 to register a motor vehicle or under sub-section (1) of section 38 to issue a certificate of fitness or by an order of suspension or cancellation made under section 33 or 34 or by an order of cancellation under sub-section (3) of section 38 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving opportunity to the original authority and the appellant to be heard either personally or by pleader in the appeal pass such orders as it thinks fit :

\*{ . . . . . }  
[a] *Proviso to sub-section (2) was omitted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 31 [w. e. f. 16-2-1957].*

### \*[36. Special provisions in regard to transport vehicle.

(1) Having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle, other than a motor cab, and its make and model and other relevant considerations, a State Government may, with the approval of the Central Government, by notification in the Official Gazette, specify in relation to each make and model of a transport vehicle the maximum safe laden weight of such vehicle and the maximum safe axle weight of each axle of such vehicle.

(2) A registering authority, when registering a transport vehicle other than a motor cab, shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely :

- (a) the unladen weight of the vehicle ;
- (b) the number, nature and size of the tyres attached to each wheel;
- (c) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and
- (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided ;

and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

#### Section 35 — Note 1

[1] An order refusing to record the transfer of ownership on a registration certificate as required by S. 31 should be deemed to be an

order passed under S. 27 of the Act which is appealable under S. 35. 1959 Raj 175 (177) [AIR V 46 C 66] : ILR (1959) 9 Raj 419.

(3) There shall not be entered in the certificate of registration of any such vehicle any laden weight of the vehicle or a registered axle weight of any of its axles in excess of that specified in the notification under sub-section (1) in relation to the make and model of the vehicle and to the number, nature and size of the tyres attached to its wheels ;

Provided that where it appears to a State Government that heavier weights than those specified in the notification under sub-section (1) may be permitted in a particular locality for vehicles of a particular type, the State Government may, by order in the Official Gazette, direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

(4) When by reason of any alteration in such vehicle, including an alteration in the number, nature or size of its tyres, the registered laden weight of the vehicle or the registered axle weight of any of its axles no longer accords with the provisions of sub-section (3), the provisions of section 32 shall apply and the registering authority shall enter in the certificate of registration of the vehicle revised registered weights which accord with the said sub-section.

(5) In order that the registered weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of sub-section (3), the registering authority may require the owners of transport vehicles in accordance with such procedure as may be prescribed to produce the certificates of registration within such time as may be specified by the registering authority.]

[a] Section 36 was substituted for the former sections 36 and 37 by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 32. [This section is to be brought into force on a date to be notified in the Gazette; up to 5-10-1960 no such notification has been issued. The former sections 36 and 37 were as follows :

“36. *Special requirement for registration of transport vehicle.*—(1) A registering authority shall refuse to register any transport vehicle other than a motor cab, unless the application for registration is accompanied by a document in Form F as set forth in the First Schedule signed by the maker of the vehicle or an assembler duly authorised by the maker in this behalf stating the greatest laden weight and greatest axle weights for which the vehicle is and the several axles are designed :

(2) Where a transport vehicle or chassis, as the case may be, has affixed to it a metal plate, bearing the stamp of the maker or assembler and identified as appertaining to the particular vehicle or chassis to which it is attached, which contains the particulars specified in sub-section (1), that plate may at the discretion of a registering authority be deemed to be the document referred to in sub-section (1).

“37. *Special particulars to be recorded on registration of transport vehicle.*—(1) A registering authority, when registering a transport vehicle other than a motor cab, shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely :—

- (a) the unladen weight of the vehicle ;
  - (b) the number, nature and size of the tyres attached to each wheel ;
  - (c) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof, fixed in accordance with sub-section (2) with reference to the particulars of the tyres entered in the certificate of registration ; and
  - (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided. ;
- and the owner of the vehicle shall have the said particulars exhibited in the prescribed manner on the vehicle.

(2) Notwithstanding any statement contained in the document referred to in sub-section (1) of section 36 as supplied by the maker or assembler of a transport vehicle, the registered weight to be recorded by the registering authority for any axle shall not exceed the permissible weight for that axle calculated in accordance with the Seventh Schedule, nor shall the registered laden weight of the vehicle exceed the sum of the several axle weights as so determined :

Provided that where it appears to a State Government that heavier weights than those specified in the Seventh Schedule may be permitted in a particular locality for vehicles of a particular type, the State Government may by notification in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the notification.

(3) When by reason of an alteration in the number, nature or size of tyres attached to the vehicle the registered laden weight or any registered axle weight recorded in the



certificate of registration no longer accords with the laden weight or the axle weight as determined in accordance with sub-section (2), the provisions of section 32 shall apply, and the registering authority shall enter in the certificate of registration a revised registered laden weight and registered axle weights."

### OBJECTS AND REASONS

"Under the provisions of sections 36 and 37<sup>a</sup> of the Act, a registering authority has to rely upon a document signed by the maker or assembler of the vehicle for determining the maximum laden weight and axle weights for which the vehicle and axles are designed. It is thus possible for a manufacturer to bid up as a "selling point", the certified weights to the limit of the capacity of the tyres, as somewhat liberally allowed in the Seventh Schedule. Misunderstanding and confusion have also been caused owing to technical defects in these sections in respect of the load distribution. It is, therefore, now proposed that State Governments should be empowered to specify the maximum safe laden weight and axle weight in relation to any make or model of transport vehicle and that the registering authorities shall enter in registration certificates the laden weight, etc., as specified by the State Government. It is proposed that the Central Government shall obtain recommendations regarding laden weights, etc., from motor vehicle manufacturers in India, and

work them out within the limits of weight specified by the manufacturers on the basis of a formula approved by the Technical Committee of the Transport Advisory Council. A consolidated list will then be furnished to the State Governments for their guidance in notifying specifications. The Seventh Schedule will be deleted. The amendments proposed are expected to serve as a check on the growing tendency to certify exaggerated weights, ignoring safety margin, and also to safeguard against the possibility of fixation of maximum permissible weights at an unwarrantable figure by merely fixing tyres of large sizes. In consequence, some vehicles on the road will have a registered laden and axle weight in excess of that allowed in respect of vehicles registered after the date on which this provision becomes law; the clause [see sub-section (5)], therefore, provides that the registering authorities may require certificates of registration to be revised in accordance with these new provisions."

—S. O. R.

**37.** [See foot-note 'a' given under section 36.]

### 38. Certificate of fitness of transport vehicles.

(1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

<sup>a</sup>[(2) Subject to the provisions of sub-section (3), a certificate of fitness shall remain effective for such period, not being in any case more than two years or less than six months, as may be specified in the certificate by the prescribed authority under sub-section (1).]

#### Section 38 -- Note 1

[1] The absence of a fitness certificate granted under S. 38, current at the moment, has the result of rendering the vehicle one not registered in accordance with S. 22. 1959 All 489 (491) [AIR V 46 C 123].

[2] Driving a taxi cab for the purpose of carrying passengers would be illegal in case it is not furnished with a certificate of fitness, as dealt with in S. 38, which is current at the relevant time. Hence an owner plying the vehicle after expiry of the terms of the fitness certificate without obtaining a fresh one violates the provisions of the section. 1954 Assam 155 (156) [AIR V 41 C 47]; 1954 Cri L Jour 1180.

[3] Accused radio dealer owning car—Car registered as motor car but having appearance of van — Finding by Magistrate that car was used for carrying goods — Held, that Magistrate was not wrong in finding accused guilty of offence under Ss. 38 (1) and 42 (1), as ac-

cused had not obtained certificate as required by S. 38 (1) or permit under S. 42 (1). 1943 Mad 720 (721) [AIR V 30]; 43 Cri L Jour 94.

[4] Section 38 makes it obligatory on the part of a person to obtain a certificate of fitness in respect of transport vehicles only. It is not applicable to private cars. Therefore an owner of a motor car who carries his luggage or other goods, for his own use cannot be prosecuted and convicted for infringing S. 38 read with S. 22. 1959 Mys 221 (222) [AIR V 46 C 88]; 1959 Cri L Jour 1095.

[5] A tractor employed in carrying manure for solely agricultural purposes is exempted from possessing a certificate of fitness under S. 38 because it does not fall within the category of transport vehicle as defined in S. 2 (33) of the Act as it stood before the amendment. 1954 Mad 1021 (1023) [AIR V 41 C 355]. 1954 Cri L Jour 1578.

(3) The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained.

<sup>b</sup>[(4) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India, and a State Government may, by notification in the Official Gazette, declare that subject to such conditions as may be specified in the notification, certificates of fitness issued by a competent authority in the State of Jammu and Kashmir shall, while they remain effective, be valid in the State as if they were issued under this Act.]

[a] *Substituted for the former sub-section (2), by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 33 [w. e. f. 16-2-1957].* [b] *Inserted, ibid.* The original sub-section (4) was omitted, *ibid.*, 1942 (XX of 1942), S. 10 [3-4-1942].

### OBJECTS AND REASONS

*Sub-section (2) as substituted in 1956.*—"Section 38 (2) of the Act has proved to be defective. Under its provisions, a certificate of fitness must remain effective for three years unless a shorter period, in no case less than six months, is specified. Even in a period of six months, a transport vehicle may run 20,000 miles and develop a number of serious defects, while in a period of three years it is not unlikely to outrun its useful life altogether. In order to ensure that transport vehicles, especially public service vehicles, are maintained and kept in a fit mechanical condition, it is essential to provide for inspection at shorter intervals. It is, therefore, proposed to reduce the maximum and minimum limits to one year and three months [raised by the Joint Committee to two years and six months]

respectively, and to place in the hands of a responsible authority, the power to fix the period of validity, subject to prescribed conditions. In practice the minimum period will probably be specified only when vehicles are very old or have a bad accident record, or when it is intended to give an owner time to replace a vehicle."

—S. O. R.

*Sub-section (4) as added in 1956.*—This sub-section provides for reciprocity in respect of the validity of certificate of fitness between States *inter se* and between States in India and the State of Jammu and Kashmir; reciprocity will be obligatory as between the States and permissive as between the States in India and Jammu and Kashmir.

—S. O. R.

### 39. Registration of vehicles, the property of the Central Government.

(1) The authority specified in Part B of the Fourth Schedule may register any motor vehicle which is the property <sup>a</sup>[or for the time being under the exclusive control] of the Central Government; and any vehicle so registered shall not, so long as it remains the property <sup>a</sup>[or under the exclusive control] of the Central Government, require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate <sup>b</sup>[to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder] issued by the authority referred to in sub-section (1).

(3) An authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

(4) If a vehicle registered under this section ceases to be the property <sup>a</sup>[or under the exclusive control] of the Central Government, the provisions of section 23 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any State Government all such information regarding the general nature, overall dimensions, and axle weights of the vehicle as the State Government may at any time require.

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 11 [3-4-1942].* [b] *Substituted for "of fitness in Form H as set forth in the First Schedule" ibid.*, 1956 (C of 1956), S. 34 [w. e. f. 16-2-1957].

**40. Application of Chapter III to trailers.**

(1) The registration mark assigned to a trailer shall be displayed in the prescribed manner on the side of the vehicle.

(2) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner on the trailer or on the last trailer in the train, as the case may be.

**41. Power to make rules.**

(1) A <sup>a</sup>[State Government] may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the conduct and hearing of appeals that may be preferred under this Chapter, <sup>a</sup>[the fees to be paid in respect of such appeals and the refund of such fees];

(b) the appointment, functions and jurisdiction of registering and other prescribed authorities;

<sup>b</sup>[(c) the issue of certificates of registration and fitness and duplicates of such certificates to replace the certificates lost, destroyed or mutilated;

(cc) the production of certificates of registration before the registering authority for the revision of entries therein of particulars relating to the registered weight or the colour or colours of the body, wings and front end of vehicles;]

(d) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks;

(e) the manner in which registration marks and the particulars referred to in <sup>bb</sup>[sub-section (3) of section 36], and other prescribed particulars shall be exhibited;

(f) the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;

<sup>c</sup>[(ff) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;]

(g) the forms, other than those set forth in the First Schedule, to be used for the purposes of this Chapter;

**Section 40 — Note 1**

[1] Sub-section (2) of this section does not abridge or override the requirements of S. 22 read with Rule 26 of the U. P. Motor Vehicles Rules of 1940 in the case of the trailer attached to a drawing vehicle and exempt it from the necessity for separate registration. It only creates an additional obligation to display on the trailer the registration number of the driving vehicle besides its own registration number. ('58) ILR (1958) 2 All 631 (635).

**Section 41 — Note 1**

[1] Rule 32 (h) of the Orissa Motor Vehicles Rules framed under S. 41 (f) of the Act contemplates the examination or inspection which is undertaken as a part of and incidental to the grant of a certificate of fitness. Under that Rule, irrespective of the number of times the inspector of motor vehicles may inspect a vehicle before he is satisfied about its fitness one fee only can be charged. ('55)

21 Cut L Tim 50 (56) (DB). (Per *Panigrahi C. J.*)

[2] In a case decided under the Motor Vehicles Act of 1914 it was held that S. 11 of that Act did not confer power on the local Government to make rules for the purpose of fixing a time limit in the registration certificate and for making a corresponding change in the schedule D and therefore Rule 6 of the Bombay Motor Vehicles Rules of 1915 as amended by the Rules of 1918 was ultra vires the powers of the Government. 1922 Bom 42 (43) [AIR V 9] : 46 Bom 646 : 23 Cri L Jour 169 (DB).

[3] Rule 7 framed by the Bombay Government under S. 11, Motor Vehicles Act of 1914, which provided for payment of annual fees for renewal of certificate of registration was held to be not ultra vires as the words "incidental to registration" in S. 11 were wide enough to cover renewal of certificates. 1933 Bom 460 (461) [AIR V 20] (FB).

- (h) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the State of particulars of such vehicles and their registration;
- <sup>d</sup>[(i) \* \* \* \* \*]
- (j) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;
- (k) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;
- (l) the exemption of road-rollers, \* [graders and other vehicles designed and used solely for the construction, repair and cleansing of roads] from all or any of the provisions of this Chapter and the rules made thereunder, and the conditions governing such exemption; and the exemption of \* [goods vehicles, being light motor vehicles] from the provisions of section 38 and the conditions governing such exemption; and
- (m) any other matter which is to be or may be prescribed.

[a] Added by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 12 [3-4-1942].  
 [b] Substituted for the original clause (c), *ibid*, 1956 (C of 1956), S. 35 [w. e. f. 16-2-1957].  
 [bb] Substituted for "sub-section (1) of section 37" by the Repealing and Amending Act, 1960 (LVIII of 1960), S. 3 & Sch. II [26-12-1960]. [c] Inserted by Act XX of 1942, S. 12 [3-4-1942]. [d] Clause (i) was omitted by Act C of 1956, S. 35 [w. e. f. 16-2-1957].  
 [e] Substituted for "delivery vans", *ibid*.

## CHAPTER IV

### CONTROL OF TRANSPORT VEHICLES

#### 42. Necessity for permits.

(1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or <sup>A</sup>[State] Transport Authority <sup>3</sup>or the Commission] authorising the use of the vehicle in that place in the manner in which the vehicle is being used :

#### SECTION 42 — SYNOPSIS

1. Scope.
2. Use of vehicle without a valid permit.
3. Infringement of conditions of permit.
4. "Permit the use."
5. Contravention of the section by persons other than the owner.
6. Exemption of Government vehicles.

1. Scope. — [1] The language of S. 42 (1) employs prohibitive or negative words and therefore its legislative intent is that the statute is mandatory. 1959 S C 79 (81) [AIR V 46 C 14]: (1959) Supp (1) S C R 153 : ILR (1958) 2 All 973 : 1959 Cri L Jour 248.

[2] Section 42 does not contravene Art. 19 (1) (g) on the ground of imposing any previous restraint on the exercise of the constitutional right guaranteed by that Article. The theory of previous restraint evolved with reference to freedom of person or speech cannot apply with the same force to freedom of trade or profession and reasonable conditions forming part of licensing regulations cannot be held to be repugnant to Art. 19 (1) (g) of the Constitution. 1953 Mad 279 (289, 290) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB). (Although what is insisted upon under the Act is described as a permit it is in substance only a licence.)

[3] The permit-holder gets no vested right

in or over the road by virtue of the authorisation given to him under sub-s. (1). The authorisation does not entitle him to use the road as a matter of right. 1951 Orissa 1 (7) [AIR V 38 C 1] : 52 Cri L Jour 43 (SB) \* 1958 Punj 315 (320) [AIR V 45 C 88] : 1 L R (1958) Punj 141 (DB).

[4] Section 42 (1) applies only to those vehicles which are transport vehicles according to the definition contained in S. 2 (33). Hence a tractor used for carrying manure does not come within the mischief of the section because being a vehicle solely used for agricultural purposes it is not a transport vehicle as defined by S. 2 (33). 1954 Mad 1021 (1025) [AIR V 41 C 355] : 1954 Cri L Jour 1578. (Case decided before S. 2 (33) was amended in 1956.)

[5] Where the owner of a motor car used the car on two occasions for carrying bundles of newspapers to the railway station without a permit under S. 42 (1), held that the car came within the definition of a "goods vehicle" in S. 2 (8) and therefore permit under S. 42 (1) was necessary and as the owner had no permit under S. 42 (1) he was guilty of an offence punishable under S. 123. 1945 Mad 440 (440) [AIR V 32] : 47 Cri L Jour 233 : ILR (1946) Mad 222.

[6] Though Chap. IV which contains S. 42, Motor Vehicles Act deals with the control of

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage :

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not :

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward,

- (a) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport.
- (b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him, or
- (c) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes.

#### Section 42 — Note 1 (contd.)

transport vehicles and contemplates primarily the control of the carriage of goods for hire or for reward. S. 42 (1) is more general and prohibits the use of a transport vehicle for any purpose in a public place save in accordance with the conditions of a permit as provided in that section. 1943 Mad 41 (41) [AIR V 30] : 44 Cri L Jour 180.

[7] This section has not repealed S. 166 of the Madras Local Boards Act of 1920. 1951 Orissa 1 (3, 4) [AIR V 38 C 1] : 52 Cri L Jour 43 (SB).

2. Use of vehicle without a valid permit. — [1] The use of a motor vehicle without a permit is also an infringement of S. 42 (1). 1955 All 618 (619) [(S) AIR V 42 C 179] : 1955 Cri L Jour 1443 (DB). (AIR 1950 All 234, *Approved*.)

[2] Section 42 (1) requires only that the vehicle which is being run should be covered by a permit and not also that the person who is running it should be himself the permit-holder. Therefore the vendee of a bus does not contravene its provisions by continuing to run the bus under the permit already granted in the name of his vendor and without getting the endorsement of the transfer made on the permit. 1955 Trav-Co 551 (552) [AIR V 40 C 210].

[3] The first proviso to S. 42 permits and authorises the use of a stage carriage as a contract carriage; only it must be subject to the condition mentioned in the permit namely that intimation is to be given of the particulars mentioned in the conditions. No special permit is required to such cases. 1956 Mad 582 (583) [AIR V 43 C 180] : 1956 Cri L Jour 1207 (1).

3. Infringement of conditions of permit. — [1] Any and every matter stated on the permit, but not under the column ear-

marked for writing down the conditions subject to which it is being issued, cannot operate as a restriction the breach of which would amount to the violation of a condition of the permit. 1950 Mad 837 (838) [AIR V 37 C 350] : 51 Cri L Jour 1567. (Lorry described as intended for carrying building materials - No entry in the column headed conditions restricting its use to carriage of building materials only - There is no breach of any condition if the lorry carries furniture.)

[2] Rule 179 of the Bengal Motor Vehicles Rules does not make the charging of the minimum tariff prescribed by it compulsory and hence a taxi driver does not contravene the condition in his permit which mentions that tariff if he charges a lower rate. 1954 S C 190 (192) [AIR V 41 C 40] : 1954 S C R 371.

[3] The restriction in a permit that the lorry can be used for the carriage of certain specified goods only for the military does not bar the owner using it for carrying other goods for his own purposes. Such use does not amount to a breach of the condition in view of the provisions of the third proviso to sub-s. (1). 1949 Mad 565 (566, 567) [AIR V 36 C 249] : 50 Cri L Jour 876. (Although the private user must also be subject to any conditions which may be prescribed the conditions cannot absolutely bar the user by the owner and render the proviso itself nugatory.)

[4] In order to constitute a breach of S. 42 (1) of the Act, the vehicle, whether stationary or moving, should be found in the course of its use for the purpose for which it is intended at a place which is not authorised by the permit. The mere fact that goods vehicle is found going empty in a route not covered by its permit will not be a breach of S. 42 (1) of the Act unless it is proved that it was going by that unauthorised route in the course of

shall not be deemed to constitute a carrying of the goods for hire or reward; but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.

(3) Sub-section (1) shall not apply—

<sup>b</sup>[(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise ;]

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes ;

(c) to any transport vehicles used solely for police, fire brigade or ambulance purposes ;

(d) to any transport vehicle used solely for the conveyance of corpses ;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety ;

<sup>a</sup>[(ee) to any transport vehicle owned by a manufacturer of automobiles and used solely for such purposes as may be approved by the Central Government ;]

(f) to any transport vehicle used for any other public purpose prescribed in this behalf ;

#### Section 42 — Note 3 (contd.)

its user as a goods transport vehicle. 1960 Mad 265 (267) [AIR V 47 C 87] : 1960 Cri L Jour 923.

4. "Permit the use." — [1] The owner of a car cannot be said to have permitted his driver to use his car within the meaning of this section merely because he had been negligent in not keeping the car locked up and that negligence helped the driver to use the car without his knowledge. 1943 Mad 41 (41) [AIR V 30] : 44 Cri L Jour 180.

[2] The owner cannot be punished for the over-loading of the bus by the driver and the conductor unless it is proved that the over-loading was at his instance or with his approval. 1960 Madh Pra 151 (152) [AIR V 47 C 71] : 1960 Cri L Jour 611.

5. Contravention of the section by persons other than the owner.—[1] Section 42 (1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user in a manner contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used in the manner prescribed by the permit. The prohibition therefore is not merely against the use by the owner but against the use by any one contrary to the conditions of the permit of the vehicle itself. Hence even a person other than the owner becomes liable to punishment under S. 123 for his transgressing the provisions of S. 42 (1). 1959 S C 79 (81) [AIR V 46 C 14] : (1959) Supp (1) S C R 153 : I L R (1958) 2 All 973 : 1959 Cri L Jour 248. (AIR 1956 All 27, *Reversed*—NOTE: In view of this decision the following case also should be taken to be impliedly overruled—AIR 1958 All 733.) \* 1959 Ker 248 (248) [AIR V 46 C 87] : 1959 Cri L Jour 1074 (DB). (Any person driving a vehicle without a permit or in

contravention of the conditions of a permit commits an offence, though he is not himself the owner.) \* 1959 Ker 161 (162, 163) [AIR V 46 C 55] : I L R (1959) Ker 37 : 1959 Cri L Jour 594 (DB) \* 1959 Mad 453 (458) [AIR V 46 C 145] : 1959 Cri L Jour 1192. (Person taking loan of car using it in contravention of S. 42.) \* 1959 Orissa 50 (51) [AIR V 46 C 15] : I L R (1958) Cut 572 : 1959 Cri L Jour 358. (Driver taking bus through a circuitous route and not by the route fixed in the permit.) \* 1958 Orissa 118 (122) [AIR V 45 C 32] : I L R (1958) Cut 113 : 1958 Cri L Jour 789 (DB). (Both driver and conductor can be punished for a contravention of S. 42 even though they are not the owners.) \* 1958 Punj 316 (317) [AIR V 45 C 86] : 1958 Cri L Jour 1094. (Driver contravening condition of permit by driving into territory not covered by the permit.) \* 1957 Bom 243 (243, 244) [(S) AIR V 44 C 84] : I L R (1957) Bom 291 : 1957 Cri L Jour 1236 (DB) \* 1957 Raj 63 (64) [AIR V 44 C 25] : I L R (1956) 6 Raj 846 : 1957 Cri L Jour 230 (DB). (Driving without a permit.) \* (1955) 59 Cal W N 787 (790). (Driver taking vehicle into a route not covered by the permit.) \* 1954 Raj 250 (251) [AIR V 41 C 78] : I L R (1953) 3 Raj 701 : 1954 Cri L Jour 1643. (Drivers other than owners can be punished under S. 123 for contravention of S. 42.) \* 1952 Punj 45 (46) [AIR V 39] : I L R (1952) Punj 308 : 1952 Cri L Jour 131. (Driver contravening the conditions of permit contravenes S. 42 and can be punished under S. 123.) \* (1951) 4 Sau L R 243 (245) (DB). (Driving without a permit.) \* 1950 All 234 (236) [AIR V 37 C 89] : 51 Cri L Jour 734. (Car which has no valid permit used on roads—Driver is liable to conviction under S. 123.) \* 1943 Mad 41 (41) [AIR V 30] : 44 Cri L Jour 180. (Driver using the car for his own purposes contravening S. 42.)

- (g) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the State Government or whose managing committee is a society registered under the Societies Registration Act, 1860,
- (h) subject to any prescribed conditions to any transport vehicle owned by the Government of "[the State of Jammu and Kashmir]" <sup>4</sup>[and] used for Government purposes unconnected with any commercial enterprise, or
- <sup>b</sup>[(i) except as may otherwise be prescribed, to any goods vehicle which is a light motor vehicle and does not ply for hire or reward, or to any two wheeled trailer with a registered laden weight not exceeding <sup>a</sup>[500 Kilo-grams] drawn by a motor car.]
- (4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 68 so prescribes, apply to any motor vehicle adapted to carry more than nine <sup>1</sup>[persons] excluding the driver.

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 36 [w. e. f. 16-2-1956].* [b] *Substituted for the former clause, ibid.* [c] *Substituted for the words "any Part B State or" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 & Sch. [1-4-1951].* [d] *Substitute i for the words "or any French or Portuguese Settlement bounded by India" by Act C of 1956, S. 36 [w. e. f. 16-2-1957].* [e] *Substituted for "1700 pounds avoirdupois" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 3 [w. e. f. 1-1-1961].* [f] *Substituted for "passengers", by Act C of 1956, S. 36 [w. e. f. 16-2-1957].*

### OBJECTS AND REASONS

*Clause (a) of sub-section (3) as substituted in 1956.*— "At present, the vehicles owned by or on behalf of the Government, except those used in connection with the business of railways, are not required to take out permits. The exemption in respect of the railways was intended to provide that commercially operated vehicles should come under the permit law. Some of the State Governments who have embarked upon commercial road transport operation are not taking out permits for their vehicles and it is doubtful whether such a

procedure is in conformity with the Constitution of India. It is, therefore, proposed to bring commercial vehicles of Governments also within the permit control.

*Clause (i), ibid.*— "Under the existing provisions, trailers used for any purpose other than the carriage of goods for hire or reward are exempted from taking out a permit. Under the proposed amendment, heavy trailers will be removed from the scope of exemption, with the result that it will be necessary to take out permits in their case."—S.O.R.

### Section 42 — Note 5 (contd.)

[2] Carrying a complement of passengers in excess of the limit fixed by the permit amounts to a contravention of the conditions of the permit for which both the driver and the conductor can be punished under S. 123. ('58) 24 Cut L. Tim 235 (237). (Over-loading the bus.) + 1958 Orissa 118 (122, 123) [AIR V 45 C 32] + I L R (1958) Cut 113 : 1958 Cri L Jour 789 (DB). (Rule 86 of the Orissa Motor Vehicles Rules also makes it the joint responsibility of both the conductor and the driver to see that the complement of passengers in the bus does not exceed its permitted seating capacity.) + ('55) 1955 Raj L W 58 (39). (The driver is liable for driving the vehicle in contravention and the conductor is liable as the officer in charge of the vehicle who allowed the contravention.)

[But see 1957 Nag 94 (95) [AIR V 44 C 32]; I L R (1956) Nag 817 : 1957 Cri L Jour 1300 (1). (Driver and conductor cannot be punished under S. 123 for carrying passengers in excess of the authorised seating accommodation—They can be convicted only under S. 112 for the breach of a rule made under the Motor Vehicles Act.)]

[3] Where under the Motor Vehicles Rules the supervision over the entry and exit of passengers and the loading of the vehicle with luggage or goods is wholly the responsi-

bility of the conductor the driver cannot be punished under Ss. 42 and 123 for an offence of over-loading the vehicle. 1943 Mad 347 (348) [AIR V 30] : 44 Cri L Jour 526.

[4] The conductor of a bus cannot be punished under S. 123 read with S. 42 on the ground that the bus was driven in a public place without a valid registration. ('51) 4 San L R 243 (244) (DB).

[5] There is no provision in the Act or in the Rules which makes it incumbent upon a driver and a conductor to issue tickets to passengers. Hence the driver and the conductor cannot be convicted under S. 42 read with S. 123 for not issuing tickets to passengers. 1952 All 276 (277) [AIR V 39] : I L R (1950) All 441 : 1952 Cri L Jour 588 + 1951 All 403 (404) [AIR V 38 C 73] + 1945 Nag 283 (284) [AIR V 32] : I L R (1945) Nag 742 : 47 Cri L Jour 189.

[6] In the case of a vehicle which is owned by a limited company the manager of the company cannot be held liable for a use made of that vehicle in contravention of the provisions of S. 42 unless it is shown that it was he who was in charge of that vehicle and he had caused or allowed the vehicle to be used in that manner. 1957 Raj 63 (64) : [AIR V 44 C 25] : I L R (1956) 6 Raj 846 : 1957 Cri L Jour 230 (DB).



## STATE AMENDMENTS

## ANDHRA PRADESH

**HYDERABAD AREA**—In its application to the Hyderabad area of the State of Andhra Pradesh, cl. (a) of sub-section (3) of section 42 was substituted by a new cl. (a) which was similar to cl. (a) now substituted by the Central Act C of 1956.

—Hyd. Act XLV of 1956, S. 2 [10-1956].

## BIHAR

In section 42, for cl. (a) of sub-section (3) *substitute* the following clause, namely,—

“(a) to any transport vehicle owned by or on behalf of the Central Government other than a public service vehicle or a goods vehicle used for the purposes of hire or reward.”

—Bih. Act XXVII of 1950, S. 2 [21-7-1950].

*Note.*—This amendment was made prior to the substitution of cl. (a) of sub-section (3) by Central Act C of 1956.

## MADHYA PRADESH

**MAHAKOSHAL REGION.**—In cl. (a) of sub-section (3) of section 42, for the words “in connection with the business of an Indian State Railway” substitute the words “for a commercial purpose.”

—C. P. & Berar Act III of 1948, S. 2 [16-1-1948].

*Note.*—This amendment was made prior to the substitution of cl. (a) of sub-section (3) by Central Act C of 1956.

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 42, for clause (a) of sub-section (3) the following shall be *substituted*, namely :—

“(a) to any transport vehicle owned by or on behalf of the Central Government or a State Government other than a vehicle used for a commercial purpose or for the purposes of a commercial department;”

—Bom. Act VII of 1947, S. 2, [23-3-1947].

*Note.*—This amendment was made prior to (a) the States re-organisations in 1956 and 1960, and (b) the substitution of cl. (a) of sub-section (3) by the Central Act C of 1956.

## Section 42 -- Note 5 (contd.)

[But see 1943 Nag 22 (23) [AIR V 30] : 43 Cri L Jour 917 : ILR (1943) Nag 64. (Agent of a partnership firm, which is the owner of the vehicle, cannot be convicted for a contravention of S. 42 even though he is in possession and control of the vehicle under a power of attorney. The word “owner” in S. 42 does not include an agent.)]

[7] A person in whose name a vehicle is registered may not be its owner and therefore not under an obligation to take out a permit. But still he cannot escape liability for punishment when the vehicle, which is solely controlled by him, is used without a permit because under the circumstances he must be held to have *allowed* that user. 1955 All 618 (619) [(S) AIR V 42 C 179] : 1955 Cri L Jour 1443 (DB). (Vehicle belonging to Central Government registered in the name of the Divisional Superintendent of Railway and entirely controlled by him — AIR 1950 All 234, overruled on this point.)

[8] Where the Regional Transport Authority has sanctioned a fare table and made it a condition of the permit that the table should be exhibited in the bus and observed it is a contravention of the provisions of S. 42 (1) to revise those fares without the approval of the Regional Transport Authority. The person responsible for making such a change and charging the increased fares commits an offence for which he can be punished even though he is not the owner of the vehicle. 1944 Nag 89 (90) [AIR V 31] : ILR (1944) Nag 173 : 45 Cri L Jour 469 (DB).

## 6. Exemption of Government vehicles.—

[1] In a case decided under this section before the Constitution it has been held that sub-

section (3) (a) was wide enough to entitle the government to own and run buses without obtaining permits for them as required by sub-s. (1). 1948 Mad 400 (406) [AIR V 35 C 197] (DB).

[2] Section 42 (3) (a) in so far as it purports to exempt the State transport buses from the application of sub-s. (1) is in conflict with Art. 14 of the Constitution and therefore void under Art. 13 thereof. 1951 All 257 (282) [AIR V 38 C 51] : ILR (1951) 1 All 269 (FB) \* 1955 Raj 14 (16) [AIR V 42 C 6] : ILR (1955) 5 Raj 127 (DB).

[See 1954 Assam 212 (216) [AIR V 41 C 61] : ILR (1955) 7 Assam 7 (DB). (See observations relating to the right of the government to run its buses without a permit. In this case the validity of sub-s. (3) (a) from the point of view of Art. 14 of the Constitution has not been considered.)]

[But see 1956 Pepsu 3 (7) [(S) AIR V 43 C 2].]

[3] The State no doubt is entitled both under the Constitution and under S. 42, Motor Vehicles Act to engage in transport business in competition with the citizens of State but it has no power to create a monopoly in that business in its own favour through executive orders and thereby interfere with the constitutional rights of the citizens under Art. 19 (1) (g) to practise any profession or to carry on any occupation, trade or business. 1954 Assam 212 (216) [AIR V 41 C 61] : ILR (1955) 7 Assam 7 (DB) \* 1951 All 257 (267, 283) [AIR V 38 C 51] : ILR (1951) 1 All 269 (DB).

[4] The mere fact that the Government vehicles are being run from the bus stand used by all Government or public motor vehi-



**HYDERABAD AREA.**—In its application to the Hyderabad area of the State of Bombay cl. (a) of sub-s. (3) of section 42 was substituted by a new cl. (a) which was similar to the cl. (a) now substituted by the Central Act C of 1956.

—Hvd. Act XIX of 1956, S. 2. [3-10-1956].

**VIDARBHA.**—The amendment made by C. P. & Berar Act III of 1948 and given under "Madhya Pradesh" applies to the Vidarbha area of the State of Maharashtra.

#### ORISSA

For power of the State Government to grant permits to stage carriage and public carrier's services notwithstanding anything contained in Chapter IV of the Motor Vehicles Act, 1939, see the Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act, 1947 (Ori. Act XXXVI of 1947), S. 4. See also the Orissa Motor Vehicles (Amendment) Act, 1948 (Ori. Act I of 1949), S. 1(4) and (5).

#### WEST BENGAL

In its application to West Bengal, in section 42, for cl. (a) of sub-section (3) substitute the following,—

"(a) to any transport vehicle owned by or on behalf of the Central Government or a State Government other than a vehicle used for a commercial purpose or for the purposes of a commercial department". —W. B. Act XIX of 1951, S. 3 [13-7-1951].

*Note.*—This amendment was made prior to the substitution of cl. (a) of sub-section (3) by Central Act (C) of 1956.

### 43. Power to State Government to control road transport.

(1) A<sup>a</sup> [State Government], having regard to—

- (a) the advantages offered to the public, trade and industry by the development of motor transport, and
- (b) the desirability of co-ordinating road and rail transport, and
- (c) the desirability of preventing the deterioration of the road system, and
- (d) the desirability of preventing uneconomic competition among motor vehicles,

may, from time to time, by notification in the Official Gazette, issue directions to the State Transport Authority—

- (i) regarding the fixing of fares and freights for stage carriages, contract carriages and public carriers;

#### Section 42 — Note 6 (contd.)

Trains which is close to the Railway Station and the timings of those vehicles are adjusted to agree with the time of arrival of railway trains so that the passengers alighting from trains have the facility of catching vehicles that would take them to their destination, can be no presumptive evidence of the fact that the State is carrying on its transport business in connection with the business of the Railway. 1956 Pepsu 3 (5) (S) AIR V 43 C 2. (Case decided under sub-s. (3) (a) as it read before its amendment in 1956.)

[5] A Government vehicle used by a Railway for conveying the collections from a Railway station to the bank and from the bank to places where the money is required by the Railway for disbursement is not exempt under sub-s. (3) (a) from the necessity of taking a permit as required by sub-s. (1). 1955 All 618 (620) (S) AIR V 42 C 179; 1955 Cri L Jour 1445 (DB). (Case decided under sub-s. (3) (a) as it read before its amendment by Act 100 of 1956.) \* 1960 S C 801 (804) AIR V 47 C 134; \* 1960 Bom 85 (90) AIR V 47 C 24.

#### Section 43 — Note 1

[1] Under S. 43 read with Ss. 58 and 58-A of the Motor Vehicles Act, it is open to the State Government to place restrictions on the plying of public buses, to confine the use of public highways for running public buses to

only such persons as have been granted permits under the Act and to cancel or refuse to renew permits held by an operator or a class of operators. These provisions have been clearly saved by Art. 19 (6) of the Constitution. Therefore, a refusal of the Regional Transport Authority to renew the permits held by certain operators does not violate their fundamental right inasmuch as the right given by Art. 19 (1) (g) is clearly subject to Art. 19 (6) of the Constitution. 1952 Nag 353 (354) AIR V 39; ILR (1953) Nag 110.

[2] The subject of fixing of permit fees is not included in S. 43 and so the local Government has nothing to do with the fixation of the permit fees. That falls within the jurisdiction of the Provincial Transport Authority. 1945 Cal 260 (264) AIR V 32; ILR (1944) 1 Cal 631 (DB).

[3] The Regional authority has no power either express or implied to fix the fares of the stage carriages under the Act or rules. Such power has been expressly given to the State Government alone by S. 43 of the Act. 1955 Cal 59 (61) (S) AIR V 42 C 10; ILR (1956) 2 Cal 879.

[4] Rule 179 of Bengal Motor Vehicles Rules which authorised the introduction of baby taxis on the roads and prescribed lower rates of tariff for them was held not to offend the provisions of Article 14 or Article 19 (1) (g). 1954 S C 190 (192) AIR V 41 C 40; 1954 S C R 371.

- (ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods, by private or public carriers;
- (iii) regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by clause (b) or clause (c) of sub-section (2) of section 68F;
- (iv) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic :

Provided that no such notification shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.]

(2) The <sup>a</sup>[State Government] shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under sub-section (1) to make representations urging the cancellation or variation of the notification on the following grounds, namely :—

- (a) that the railways are not giving reasonable facilities or are taking unfair advantage of the action of the <sup>a</sup>[State Government] under this section; or
- (b) that conditions have changed since the publication of the notification; or
- (c) that the special needs of a particular industry or locality require to be considered afresh.

(3) If the <sup>a</sup>[State Government], after considering any representation made to it under sub-section (2) and having heard the representatives of the interests affected and <sup>b</sup>[the State Transport Authority], is satisfied that any notification issued under sub-section (1) ought to be cancelled or varied, it may cancel the notification or vary it in such manner as it thinks fit.

[a] Substituted for certain original words by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 37 [w. e. f. 16-2-1957]. [b] Substituted for "the State and Regional Transport Authorities", *ibid*.

### OBJECTS AND REASONS

*Amendments made in 1956.*—"The existing section 43 gives State Governments only restricted powers (the exercise of which is subject to a cumbersome procedure) in respect of matters of detail which seem best left to the State Transport Authority. At the same time, the State Government must have power to give necessary directions. This clause, therefore, seeks to empower the State Governments to give directions, in regard to fixing of fares and freights for stage carriages, contract carriages and public carriers and the prohibition or restriction of the conveying of long distance goods traffic. The State Governments are also being empowered to give effect to any agreement with the Central Government or any other State Government or any agreement concluded by the Central Government with the neighbouring countries relating to the regulation of motor transport generally,

its co-ordination with other means of transport and conveyance of long distance goods traffic or the mutual exchange or control of motor transport.

"Hitherto, State Governments have been obliged to consult affected interests severally before passing orders, and this has given rise to practical difficulties. It is proposed to require instead that the directions shall be published for objections which will be considered before being issued. It is considered unnecessary to provide for consultation with Regional Transport Authorities as well as the State Transport Authority as the latter can speak for the former."

—S.O.R.

Clause (iii)—"Where on account of the State transport undertaking taking over any route or area the existing permits are cancelled or the terms thereof are modified, the Committee feel that the holders of such permits should,

as far as possible, be granted permits for alternative routes or areas. The Committee are, therefore, of opinion that the State Government should be empowered to give necessary directions in this regard to the State Transport Authority."—J.C.R.

**Note**—Prior to its amendment by Act C of 1956, after cl. (d) of sub-section (1) of section 43, the said section 43 was as follows, namely,

"and after having heard the representatives of the interests affected and having consulted the State and Regional Transport Authorities concerned by notification in the Official Gazette,—

- (i) prohibit or restrict throughout the State or in any area or on any route within the state, subject to such conditions as it may think desirable, the conveying of long distance goods traffic generally, or of prescribed classes of goods, by private or public carriers; or
- (ii) fix maximum or minimum fares on freights for stage carriages and public carriers to be applicable throughout the state or within any area or on any route within the State."

### STATE AMENDMENTS

#### ANDHRA PRADESH

In its application to the State of Andhra Pradesh, excluding the transferred territories, same as that given under Madras.

#### MADHYA PRADESH

**MAHAKOSHAL REGION**—In sub-section (1) of section 43, for item (ii) *substitute* the following items, namely,—

"(i) fix maximum, minimum or specified fares or freights for stage carriages and public carriers to be applicable throughout the State or within any area or any route within the State, or

(ii) notwithstanding anything contained in section 58 or section 60 cancel any permit granted under the Act in respect of a transport vehicle or class of such permits either generally or in any area specified in the notification:

Provided that no such notification shall be issued before the expiry of a period of three months from the date of a notification declaring its intention to do so:

Provided further that when any such permit has been cancelled, the permit holder shall be entitled to such compensation as may be provided in the rules; or

(iv) declare that it will engage in the business of road transport service either generally or in any area specified in the notification."

—C. P. & Berar Act III of 1948, S. 3 [16-1-1948].

#### MADRAS

In section 43, after sub-section (3) *add* the following sub-section, namely,—

"(4) (a) The State Government may, by notification in the Fort St. George Gazette, declare that it will engage in the business of road transport either throughout the State or in such areas therein, or on such routes or portions thereof in the State, as may be specified in the notification;

**Explanation.**—The power conferred by this clause may be exercised from time to time, as occasion requires.

(b) Where a notification has been issued under clause (a), the State Government, notwithstanding anything contained in section 58 or section 60, may, after giving not less than three months' notice, cancel any permit granted under this Act in respect of a transport vehicle or any class of such permits, in so far as such permit or class of permits relates to the area or the route specified in such notification :

Provided that where any permit (other than a permit for a spare transport vehicle) is cancelled under this clause, the holder of the permit shall be entitled to such compensation as may be prescribed, if the following conditions are fulfilled, namely,—

(i) a permit should have been held for such vehicle for the area or route concerned both on the 10th July 1947 and on the date of the issue of the notification under clause (a);

(ii) if the permit held in respect of the vehicle on the 10th July, 1947, was a temporary permit irregularly issued under section 62 in a case where, but for the orders of the State Government, a permit would have been granted or renewed under section 58, a period of three years from the date of the grant of such temporary permit should not have expired before the date of the issue of the notification under clause (a);

**Explanation.**—Where more than one temporary permit has been granted irregularly in respect of the vehicle on or after the 2nd September, 1946 and on or before the 10th July, 1947, the earliest of the temporary permits so granted shall be taken into account for the purposes of the foregoing paragraph."

—Madras Act XX of 1948, S. 2 [21-12-1948].

**MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra, to sub-section (1) of section 43 the following shall be *added*, namely :—

- “ ; or
- (iii) notwithstanding anything contained in section 58 or section 60 cancel any permit granted under the Act in respect of a transport vehicle or class of such permits either generally or in any area specified in the notification :
- Provided that no such notification shall be issued before the expiry of a period of three months from the date of a notification declaring its intention to do so ;
- Provided further that when any such permit has been cancelled the permit holder shall be entitled to such compensation as may be provided in the rules ; or
- (iv) declare that it will engage in the business of road transport service either generally or in any area specified in the notification.”

— Bom. Act VII of 1947, S. 3 [23-3-1947].

**VIDARBHA.** — The amendment made in this section by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

**PUNJAB**

In its application to the State of Punjab, excluding the transferred territories, in section 43, after sub-section (3) *add* the following sub-section, namely, —

- “(4) (a) The State Government may, by notification, declare that it will engage in the business of road transport either throughout the State or in such areas therein or on such routes or portions thereof in the State, as may be specified in the notification.
- (b) Where a notification has been issued under clause (a), the State Government, notwithstanding anything contained in section 58 or section 60, may after giving not less than one month's notice, cancel any permit granted under this Act in respect of a transport vehicle or any class of such permits, in so far as such permit or class of permits relates to the area or the route specified in such notification :
- Provided that where any permit (other than a temporary permit or a permit for a spare transport vehicle) is ~~cancelled~~ under this clause, the holder of such permit shall be entitled to such compensation as may be prescribed.”

— E. P. Act XXVIII of 1948, S. 2 [12-7-1948].

**WEST BENGAL.**

In its application to West Bengal, to sub-section (1) of section 43 *add* the following namely, —

- “ ; or
- (iii) notwithstanding anything contained in section 58 or section 60 cancel any permit granted under this Act in respect of a transport vehicle or any class of such permits either generally or in any area specified in the notification :
- Provided that no such notification shall be issued before the expiry of a period of three months from the date of a notification declaring its intention to do so :
- Provided further that when any such permit has been cancelled, the permit holder shall be entitled to such compensation as may be prescribed ; or
- (iv) declare that it will engage in the business of road transport service through the State or in such area or on such route within the State as may be specified in the notification.”

— W. B. Act XIX of 1951, S. 4 [13-7-1951].

**SECTION 43A****STATE AMENDMENTS****ANDHRA PRADESH**

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, after section 43 *insert* the following section, namely, —

“43A. Power of State Government to issue orders and directions to Transport Authorities.—The State Government may issue such orders and directions of a general character

**Section 43A (Andhra Pradesh and Madras)—**  
**Note I**

[1] An order made under S. 43-A by which the Government gives directions to the Transport Authority is not a law regulating the rights of the parties to carry on the business of motor transport. Where therefore the Central Transport Authority cancels a permit issued to a party by the R. T. A. and grants the same to another party in accordance with the directions issued during the pendency of the appeal it cannot be said that it has interfered with the vested rights of the parties by

giving retrospective effect to any subsequently made law. 1959 S C 694 (700, 701) [AIR V 48 C 98]. (Per *Sarkar J.* contra — Directions given under S. 43A amount to law and affect the parties.)

[2] Orders issued under S. 43-A amount to merely executive and administrative directions to the subordinate authorities. They do not confer any legal enforceable rights on any party. 1959 S C 896 (901) [AIR V 48 C 125]. (Order made by Transport Authority—Direction under section not complied with — Still order cannot be quashed by writ of certio-

as it may consider necessary, in respect of any matter relating to road transport, to the State Transport Authority or a Regional Transport Authority, and such Transport Authority shall give effect to all such orders and directions."

— Mad. Act XX of 1948, S. 3 [21-12-1948].

## BIHAR

Section 43A *inserted* is the same as that given under Andhra Pradesh without, however, the words "of a general character".

—Bih. Act XXVII of 1950, S. 3 [21-7-1950].

## MADRAS

In its application to the State of Madras, after section 43 *insert* the following section, namely,—

"43A. Power of State Government to issue orders and directions to Transport Authorities.

— (1) [Same as that given under Andhra Pradesh]

— Mad. Act XX of 1948, S. 2 [21-12-1948].

"(2) The State Government may, on a consideration of the matters set forth in sub-section (1) of section 47, direct any Regional Transport Authority or the State Transport Authority to open any new route or to extend an existing route or to permit additional stage carriages to be put, or to reduce the number of stage carriages, on any specified route."

— Madras Act XXXIX of 1954, S. 2.

## PUNJAB

Section 43A *inserted* is the same as that given under Andhra Pradesh with the addition of the words "and publish in such manner as may be prescribed" after the words "Government may issue".—

E. P. Act XXVIII of 1948, S. 3 [12-7-1948].

## 44. Transport authorities.

(1) The <sup>^</sup>[State Government] shall, by notification in the Official Gazette, constitute for the <sup>^</sup>[State] a <sup>^</sup>[State] Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this Chapter on such Authorities :

Section 43A (A. P. & Mad.) — Note 1 (*contd.*)  
rari.)+1957 Andh-Pra 882 (886) [AIR V 44 C 271] : ILR (1956) Andh 591.

[3] The power conferred by S. 43-A on the Government is not an unlimited power. It appears to be limited to the purpose of giving instructions and directions to the Transport Authorities in relation to their administrative functions. The fact that the Government can in practice, misuse that power to issue orders and directions even in relation to the judicial functions of the Transport Authorities is not ground for striking down the section as unconstitutional. If the Government in excess of its powers issues such an order or direction the proper remedy lies in challenging the order itself as unconstitutional. 1953 Mad 279 (290) [A I R V 40 C 102] : I L R (1953) Mad 304.

[4] Instructions given under S. 43-A cannot override the discretionary power conferred upon the Regional Transport Authority under S. 60 in the matter of suspending permits. 1957 Andh-Pra 882 (886) [A I R V 44 C 271] : ILR (1956) Andh 591.

— [5] Under sub-section (2) the Government has jurisdiction to extend an existing route by including in it any other existing route. But in exercising that jurisdiction it is bound by the principle of natural justice and hence it must give an opportunity to any party who desires to make representations against the proposed extension. 1957 Mad 536 (538) [(5) AIR V 44 C 157] : ILR (1957) Mad 908.

[6] The Government while directing the extension of existing route has no jurisdiction to restrict the number of buses that can ply

on the extended route. 1957 Mad 536 (538, 539) [(5) AIR V 44 C 157] : ILR (1957) Mad 908.

[7] Since the direction issued under S. 43-A is an administrative order it is outside the purview of correction by the issue of a writ of certiorari. 1957 Mad 536 (540) [(5) A I R V 44 C 157] : ILR (1957) Mad 908.

[8] The Government cannot be directed by writ of mandamus to cancel its order made under S. 43-A. 1957 Mad 536 (540) [(5) AIR V 44 C 157] : ILR (1957) Mad 908.

[9] Sub-section (2) was introduced only so that the Government may have power to issue directions to the Regional Transport Authorities or State Transport Authority relating to the matters mentioned therein. It cannot be construed as indicating any absence of power in the Regional Transport Authorities to fix the number of stage carriages under S. 47 (3) within its region. (53) 1958 Ker L T 666 (668).

## SECTION 44 — SYNOPSIS

1. Scope.
2. Constitution of transport authorities.
3. Financial interest.
4. Qualification for chairmanship — Judicial experience.
5. Power to take over inter-district routes — Sub-s. (3) (b).
6. Directions to B. T. As. under sub-s. (4).
7. Delegation of powers — Sub-s. (5).

1. Scope.—[1] Section 44 does not constitute the State Transport Authority or the

Provided that \*[\* \* \*] in <sup>b</sup>[the Union territories] the <sup>a</sup>[State Government] may abstain from constituting any Regional Transport Authority :

Provided further that the area specified as the region of a Regional Transport Authority shall in no case be less than an entire district, or the whole area of a Presidency-town.

(2) A <sup>a</sup>[State] Transport Authority or a Regional Transport Authority shall consist of <sup>c</sup>[a Chairman who has had judicial experience and such other officials and non-officials, not being less than two, as the <sup>a</sup>[State Government] may think fit to appoint]; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a <sup>a</sup>[State] or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the <sup>a</sup>[State Government] of the acquisition of such interest and shall vacate office:

<sup>d</sup>[Provided that nothing in this sub-section shall be construed as debarring an official (other than an official connected directly with the management or operation of a transport undertaking) from being appointed as or continuing as a member of any such Authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking.]

#### Section 44 — Note 1 (contd.)

Central Road Traffic Board as an appellate authority to hear appeals from orders of the Regional Transport Authorities. It is rule 147 framed under S. 68 that makes the Central Road Traffic Board as the appellate authority competent to hear appeals from orders of the Regional Transport Authority. 1960 Andh Pra 268 (270) [AIR V 47 C 82] (DB).

[2] The R. T. A. and the S. T. A. being quasi-judicial bodies, when serious allegations or charges such as of bribery are made against some of the members constituting the R. T. A. it is desirable to constitute another R. T. A. 1954 Assam 219 (221) [AIR V 41 C 62] : ILR (1955) 7 Assam 23 (DB).

[3] A Regional Transport Authority acts judicially in granting or refusing licences and its orders are subject to the writ of certiorari. 1953 Mad 709 (711) [AIR V 40 C 272] : I L R (1954) Mad 36 (DB).

[4] A writ of prohibition cannot be issued restraining the R. T. A. from dealing with an application for variation of the route filed before it in pursuance of an order of the Transport Commissioner passed under S. 44 (3) (c) directing such a variation. The order of the Transport Commissioner being an administrative one cannot be got rid of directly by a writ of certiorari under Art. 226 of the Constitution and that being so the same result cannot be obtained by restraining the R. T. A. from dealing with the application for variation. 1960 Mad 365 (366) [AIR V 47 C 129] : ILR (1960) Mad 642 (DB).

[5] Where the District Magistrate who happened to be the chairman of the R. T. A. passed an order rejecting a representation under S. 47, in his capacity as a District Magistrate — *Held*, that the order was illegal as the District Magistrate had not passed the order while purporting to act as a chairman of the R. T. A. ('57) 61 Cal W N 779 (785).

2. Constitution of transport authorities.—[1] The section contemplates one composite notification constituting the R. T. A. along with the appointment of its members. 1959 Ker 347 (348) [AIR V 46 C 115] : I L R (1959) Ker 1124.

[2] The field of selection for appointment to the Provincial Transport Authority being 'officials and non-officials' treated as one unit, the Government can appoint from both the groups or exclusively from either of the two groups. 1958 Andh 232 (235) [AIR V 43 C 65] (DB). (Case decided before the amendment. See the comment of the full bench of the Rajasthan H. C. on this decision in *Janta Transport Co-operative Society v. R. T. A., Jaipur*, Civil Ref. No. 39 of 1960 D/- 5-11-1960, in which it has been held that after the amendment the Constitution of R. T. A. without a non-official in it would be invalid.)

[3] On the expiry of their term the members constituting the R. T. A. have no legal authority to represent the R. T. A. and any orders granting permits passed by such members after expiry of their term are invalid. The Government cannot by issuing a subsequent notification extend their term retrospectively from the date of expiry of their term till the appointment of their successors so as to give validity to the orders passed by such members after the expiry of their term. 1959 Ker 347 (348) [AIR V 46 C 115] : I L R (1959) Ker 1124 + 1960 Ker 229 (230) [AIR V 47 C 109] (DB). (The notification D/- 23-12-1958 of Kerala Government sanctioning the continuance of the S. T. A. and the R. T. A. as on 1-8-1959 from the date of expiry of their term till their successors are appointed is inoperative.)

[4] The R. T. A. performs a judicial or quasi-judicial function in deciding on the applications made to it for the grant of permits. The members of such a body should not

(3) A <sup>A</sup>[State] Transport Authority <sup>\*</sup>[shall give effect to any directions issued under section 43, and subject to such directions and save as otherwise provided by or under this Act] shall exercise and discharge throughout the State the following powers and functions, namely :—

- (a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the <sup>A</sup>[State];
- (b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;
- (c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and
- (d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a <sup>A</sup>[State] Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall <sup>\*</sup>[in the discharge of its functions under this Act, give effect to and] be guided by such directions.

“(5) The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made under S. 68, may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules.]

[a] The words “in the North-West Frontier Province and” were omitted by A. O., 1948.

[b] Substituted for “Part C States,” by 3 A. L. O., 1956. [c] Substituted for the words “such number of Officials and non-Officials as the State Government may think fit to appoint,” by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 38 [w. e. f. 1-8-1957]. [d] Inserted, *ibid.* [e] Inserted, *ibid.*, S. 38 [w. e. f. 16-2-1957]. [f] Added, *ibid.*, 1942 (XX of 1942), S. 13 [3-4-1942].

#### Section 44 — Note 2 (contd.)

have a bias which is likely to affect their impartiality. It is not necessary that actual partiality should be established before the proceedings of that body are vitiated. The presence of a member having a bias vitiates *ab initio* the Constitution of the body itself. 1953 Mad 709 (710, 711) [A I R V 40 C 272] : ILR (1954) Mad 36. (Co-operative society applying for permit—Collector who was ex officio president of society and also chairman of R. T. A. presiding at meeting at which permit was granted — Held, the permit granted was illegal.) \* 1960 Assam 100 (106) [A I R V 47 C 28] (DB) \* 1957 Andh Pra 739 (741) [A I R V 44 C 233] \* 1955 Sau 57 (60) [(S) A I R V 42 C 22] (DB). (Member of R. T. A. also president of a Central Co-operative society interested in motor transport—Member resigning his presidency of Co-operative society participating at a meeting of the R. T. A. held on the next day to consider applications including an application by a co-operative society — In such circumstances there is scope to challenge validity of the meeting on the ground of apprehension of bias on his part.)

[5] When certain outsiders who are not members of the R. T. A. take part in the deliberations of the R. T. A. in proceedings in respect of application for permit, the entire proceedings are vitiated and any decision taken with respect to the application is void. 1959 Cal 326 (328) [A I R V 46 C 89] (DB).

[6] Applications for renewal of their permits made by the petitioner under S. 58 (2) of

the Motor Vehicles Act were heard at full length on 22-8-1950 by the Regional Transport Authority consisting of ten members and the case was fixed for delivery of judgment without fixing any date. The judgment was reserved for certain further enquiries and the parties were informed accordingly. After the receipt of the inquiry report the judgment was finally delivered on 26-9-59 allowing the renewal of the permits. Three out of the ten members constituting the R. T. A. on 22-8-1950 did not take part in the proceedings on 26-9-1959 and instead two new members were included. There was no fresh hearing on 26-9-1959 on which date the judgment was delivered—Held, that the Regional Transport Authority which sat on 26-9-1959 was not legally authorised to determine the question affecting the rights of the parties which had been heard and considered by a different body of persons. In the absence of any fresh hearing on 26-9-1959 the judgment delivered on that date had no force and effect in law and was liable to be set aside. 1960 Pat 333 (336, 337) [A I R V 47 C 118] (DB).

[7] The minimum number required to constitute a State Transport Authority is only three. Where out of the five members constituting such authority, two members are found to be disqualified under S. 44 (2) proviso, the participation of those two members along with the other three will not make the decision *ab initio* void. 1958 Ker 341 (347) [A I R V 45 C 122].

3. Financial interest. — [1] Merely because the Government owns the transport



## OBJECTS AND REASONS

*Proviso to sub-section (2).* — “At present, an official employed by the Government, which has acquired or acquires, a financial interest in a transport undertaking is debarred from being appointed a member of a State or Re-

gional Transport Authority. It is proposed to clarify that this ban will not apply to officials except those directly connected with the management and operation of State transport undertakings.”—S. O. R.

## STATE AMENDMENTS

### ANDHRA PRADESH

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, to sub-section (2) of section 44 add the following provisos, namely,—

“Provided that if the State Government thinks fit, the State Transport Authority or a Regional Transport Authority may consist of a single official :

Provided further that an official shall not be deemed to have a financial interest as aforesaid merely by reason of the fact that the State Government employing him has such interest.”

— Madras Act XX of 1948, S. 4 [21-12-1948].

**HYDERABAD**—In its application to the Hyderabad area of the State of Andhra Pradesh, the Proviso added to sub-section (2) of section 44 is the same as that added by the Central Act C of 1956.

—Hyd. Act XLV of 1956, S. 3 [5-10-1956].

### BIHAR

After sub-section (2) of section 44 insert the following sub-section, namely,—

“(2A) Notwithstanding anything contained in sub-sections (1) and (2), but always subject to the other provisions of this Act, the State Transport Authority or a Regional Transport Authority shall cease to exercise and perform the powers and duties conferred or imposed on it by or under this Act in respect of transport vehicles or class of transport vehicles used in areas or on routes or portions thereof specified in a notification under sub-section (1) of section 66A with effect from such date and subject to such restrictions and exceptions, if any, as the State Government may, by notification, direct and the functions of the State Transport Authority or a Regional Transport Authority in respect of such Transport vehicles or class of transport vehicles shall be discharged by such authority and in such manner as may be specified by the State Government in the said notification.”

— Bihar Act XXVII of 1950, S. 4 [21-7-1950].

### Section 44 — Note 3 (contd.)

undertaking its servants and officials are not disqualified from being appointed as members of the State or Regional Transport Authority. But if the officials or servants are employed in the undertaking itself, then they are certainly disqualified because, being employees of the undertaking, they have a financial interest in the undertaking. 1952 All 74 (76, 78) [AIR V 39] : 1LR (1952) 2 All 926 (DB). (Transport Commissioner and D. I. G. of Police who are Government employees cannot be said to have any financial interest in the Government Roadways which is a part of the Transport Department.) \* 1951 All 257 (285, 290, 327) [AIR V 38 C 51] : 1LR (1951) 1 All 269 (FB)\* 1948 Mad 400 (405) [AIR V 35 C 197] (DB). (Forestry officer, a collector of a District or a Medical officer unconnected with Government motor transport undertaking can be validly appointed as members.)

[2] In a case decided before the amendment it was held that “financial interest” meant financial interest which a person had in his personal capacity and not as employee of another who had the financial interest. On this principle it was held that the State Transport Commissioner could be a member of the State Transport authority although he was the administrative head of the State Transport system. The proviso added by the Amending Act of 1956 now recognises the main principle laid down by the above decision but has expressly excluded from its purview an official connected with the management of a transport undertaking. Hence the above decision as to the State Transport Com-

missioner being competent to be a member of the State Transport Authority could not be good law now even after the enactment of the Proviso recognising the main principle laid down in the above case. 1957 Pat 732 (735, 736) [AIR V 44 C 219] (DB).

[3] In view of the Proviso to S. 44 (2) the appointment of the Regional Transport Officer as one of the members of the Regional Transport Authority does not render its constitution invalid. 1959 All 197 (202) [AIR V 46 C 48] (DB).

[4] A member of the State Transport Advisory Board comes within the prohibition mentioned in the Proviso to S. 47 (2). 1958 Ker 341 (346, 347) [AIR V 45 C 122].

**4. Qualification for chairmanship — Judicial experience.** — [1] The provision in S. 44 (2) that the Chairman must have had judicial experience is not directory but mandatory. Hence only a person who has had judicial experience can be appointed the chairman. 1960 Manipur 36 (42) [AIR V 47 C 10].

[2] Sub-section (2) as amended requires that the chairman of the State Transport Authority and the Regional Transport Authority must be a person of judicial experience. Judicial experience would mean the knowledge or skill gained by a person by actually working as a judge in a Court of law. The experience of a person which he acquired in the capacity as the chairman of the S. T. A. in deciding a few appeals or even experience gained by deciding revenue cases cannot be regarded as judicial experience for the purposes of the sub-



## MADHYA PRADESH

**MAHAKOSHAL REGION**—In its application to the Mahakoshal region of the State of Madhya Pradesh, to sub-section (2) of section 44 *add* the following Provisos, namely,—

“Provided that if the State Government so thinks fit the State Transport Authority or a Regional Transport Authority may consist of a single official :

Provided further that nothing in this sub-section shall debar an official from appointment on the State Transport Authority or a Regional Transport Authority merely by reason of the fact that the State Government employing him has any financial interest in a transport undertaking or that such official is appointed by the State Government as an, or holds on behalf of the State Government the office of, *ex officio* or managing director in a transport undertaking in which the State Government has any financial interest.”

—C. P. & Berar Act III of 1948, S. 4 [16-1-1948].

## MADRAS

In its application to the pre-reorganised State of Madras, for the Provisos to sub-section (2) of section 44 [these Provisos were *added* by Madras Act XX of 1948] *substitute* the following Provisos, namely,—

“Provided that nothing in this sub-section shall be construed as debarring an official (other than an official connected directly with the management or operation of a transport undertaking) from being appointed as or continuing as a member of any such Authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking :

Provided further that if the State Government thinks fit, the State Transport Authority or a Regional Transport Authority may consist of a single official only.”

—Madras Act XIX of 1957, S. 2 [9-12-1957].

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in sub-section (2) of section 44, the following provisos shall be *added*, namely :—

“Provided that if the State Government so thinks fit the State Transport Authority or a Regional Transport Authority may consist of a single official :

Provided further that nothing in this sub-section shall apply to an official merely by reason of the fact that the State Government employing him has any financial interest in a transport undertaking.”

Bom Act VII of 1947, S. 4 [23-2-1947].

**HYDERABAD**—In its application to the Hyderabad area of the State of Maharashtra, the Proviso *added* to sub-section (2) of section 44 is the same as that *added* by the Central Act (C of 1956).

—Hyd. Act XLV of 1956, S. 3 [5-10-1956].

**VIDARBHA**—The amendment made in this section by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha region of the State of Maharashtra.

### Section 44 — Note 4 (contd.)

Section. 1960 Raj 105 (115, 114) [AIR V 47 C 27] : ILR (1959) 9 Raj 869 (DB). (Nominal judicial experience for a short period is no qualification.) \* 1960 Manipur 58 (42) [AIR V 47 C 10]. (In this case a doubt was expressed as to whether a Deputy Commissioner having power under Assam Land and Revenue Manual could be called a person who has had judicial experience.)

[5] A person who has acted as a judge or magistrate in a civil or criminal Court of law and has gained experience in that capacity in a reasonable measure is alone qualified for appointment as the chairman of the S. T. A. or R. T. A. 1960 Raj 105 (116) [AIR V 47 C 27] : ILR (1959) 9 Raj 869 (DB).

[4] Experience in the decision of criminal cases is as much judicial experience as the experience acquired by a Civil Judicial Officer in deciding civil disputes. A District Magistrate can therefore be said to be a person possessing judicial experience fulfilling the requirements of sub-section 2 for appointment as chairman. 1959 All 197 (202) [AIR V 46 C 48] (DB).

[5] Members of the Bar are no doubt part of the judicial machinery. However the functions they perform are different from those of the Bench. Lawyers get little opportunity to apply their impartial and unbiased

mind to judicial matters and hence the legal knowledge and experience which they acquire cannot be regarded as judicial experience. 1960 Raj 105 (114) [AIR V 47 C 27] : ILR (1959) 9 Raj 869 (DB).

**5. Power to take over inter-district routes**—Sub-section (3) (b).—[1] The Provincial Transport Authority has power under cl. (b) of sub-section (3) to take over inter-District routes. 1951 Orissa 81 (83) [AIR V 38 C 26] (DB).

**6. Directions to R. T. As. under sub-section (4).**—[1] Section 44 lays down the constitution of various Transport authorities and also confers on the State Transport Authority fairly extensive powers of control over the Regional Transport Authorities. The directive No. 2715-16/T dated 4th March 1952 of the Punjab Government directing the R. T. A. not to issue permits on routes parallel to Punjab Roadways without advice of S.T.A. is therefore not illegal. 1960 Punj 14- (144) [AIR V 47 C 46] : ILR (1959) Punj 2108.

[2] The State Transport Authority cannot under sub-section (4) validly issue directions to the R. T. A. which are inconsistent with the other provisions of the Act. Thus it cannot validly exercise its powers under the sub-section to change the forum prescribed by S. 45 as having jurisdiction to entertain applications for permits and direct that the ap-

**WEST BENGAL**

In its application to the State of West Bengal, to sub-section (2) of section 44 add the following Provisos, namely,—

"Provided that if the State Government so thinks fit the State Transport Authority or a Regional Transport Authority may consist of a single official :

Provided further that nothing in this sub-section shall apply to an official merely by reason of the fact that the State Government employing him has any financial interest in a transport undertaking."

W. B. Act XIX of 1951, S. 5 [13-7-1951].

**SECTION 44A****STATE AMENDMENTS****ANDHRA PRADESH**

In its application to the pre-reorganised State of Andhra Pradesh excluding the transferred territories, after section 44 insert the following new section, namely,—

"44A. State Transport Commissioner or his subordinate to exercise notified powers.—

The State Government may appoint a State Transport Commissioner; and notwithstanding anything contained in this Act, may, by notification in the Official Gazette, authorise such Commissioner or any officer subordinate to him, to exercise and discharge, in lieu of any other authority prescribed by or under this Act, such powers and functions as may be specified in the notification."

—Madras Act XX of 1948, S. 5 [21-12-1948].

**Section 44 — Note 6 (contd.)**

Applications should be filed before a different forum. The S. T. A. can however authorise under the sub-section a different R. T. A. to dispose of an application for permit as there is a clear distinction between disposal of an application and the filing of it. 1951 Orissa 81 (83) [AIR V 38 C 26] (DB).

**7. Delegation of powers—Sub-section (5).**

—[1] The exercise of the power of delegation under sub-section (5) is dependent on the existence of rules framed by the Government under the sub-section. In the absence of such rules the delegation becomes invalid. 1951 Orissa 81 (83, 84) [AIR V 38 C 26] (DB) \* 1956 Andh 232 (234) [AIR V 43 C 65] (DB).

[2] Section 44 merely authorises the State Government when framing rules under S. 68 to authorise the S. T. A. and the R. T. A. to delegate their functions. The State Government is not given the power to delegate those functions. Delegation of authority is rendered possible if the Provincial Government authorises the delegation and the delegation takes place in point of fact. Where the R. T. A. has not been authorised to delegate any of its powers to the secretary but it delegates some of its powers, any order passed by the Secretary in the exercise of the delegated powers is without jurisdiction. 1953 Assam 199 (200, 201) [AIR V 40 C 81] : I L R (1953) 5 Assam 282 (DB).

[3] Under S. 44 (5) there cannot be any delegation of power that would contravene the provisions of the statute. The power to cancel or suspend a permit granted by the R. T. A. cannot be validly delegated to its secretary since such delegation would contravene the provisions of Ss. 59 and 60 of the Act. The Secretary of the R. T. A., therefore, cannot in pursuance of R. 134A (XI) of Madras Motor Vehicles Rules exercise such a power of cancellation. 1957 Andh Pra 1027 (1031) [AIR V 44 C 332] : ILR (1957) Andh Pra 643 (FB) \* 1956 Andh 232 (234) [AIR V 43 C 65] (DB). (Rule 134-A (XI) of the Madras Motor Vehicles Rules tested by the principle that a rule cannot travel beyond the four corners of the Act is well within the rule making power of the Government. The proper way of construing it is to hold that it gives

way to the special provisions of S. 60 in so far as it empowers the secretary to suspend a permit granted by the R. T. A.)

[But see 1957 Mad 387 (390, 391) [(S) AIR V 44 C 118] : ILR (1957) Mad 461 (DB).]

[4] By enacting S. 44 (5) the Legislature has not abdicated its legislative functions and the validity of S. 44 (5) cannot be challenged as constituting an excessive or unconstitutional delegation of the legislative functions by the legislature. 1957 Mad 387 (390) [(S) AIR V 44 C 118] : ILR (1957) Mad 461 (DB). (AIR 1956 Andh 129, *Rel. on.*) \* 1956 Andh 129 (138) [(S) AIR V 43 C 45] : ILR (1956) Andh 800 (DB). (Rule 134-A, Andhra Motor Vehicles Rules, not invalid.)

[5] The Government has power to make Rules enabling the Regional Transport Authority to delegate its power under Ss. 58 and 63 to its Secretary. 1959 Mys 17 (20) [AIR V 46 C 5] : ILR (1958) Mys 421 (DB).

[6] The Central Road Traffic Board can delegate to its Secretary the power to grant or refuse the stay of orders appealed against and Rule 140-A (V) of Motor Vehicles Rules (Andhra) authorising such delegation is valid. 1957 Andh-Pra 830 (831) [(S) AIR V 44 C 252].

[7] The section cannot be said to offend Art. 14 on the ground that the legislature has entrusted arbitrary powers to the State Government under S. 44 (5) and that its operation might result in discriminatory legislation. 1957 Mad 387 (390) [(S) AIR V 44 C 118] : ILR (1957) Mad 461 (DB).

**Section 44A (Andhra Pradesh)—Note 1**

[1] The legality of the S. 44-A cannot be challenged on the assumption that the power of delegation vested by it in the Government may be abused by it by authorising any ineligible person to exercise and discharge the powers and functions of any authority under this Act. 1959 Andh Pra 413 (417) [AIR V 46 C 117] : ILR (1959) Andh Pra 375 (FB).

[2] The power of the Government to delegate under this section is not limited to the delegation of powers to an officer whose subordination to the State Transport commissioner is statutorily defined. It can also be made to the Regional Transport officer who is without

**BIHAR**

In its application to the State of Bihar, the newly inserted section 44A is the same as the one given under Andhra Pradesh.

— Bihar Act XXVII of 1950, S. 5 [21-7-1950].

**MADHYA PRADESH**

**MAHAKOSHAL**—In its application to the Mahakoshal region of the State of Madhya Pradesh, after section 44 insert the following new section, namely:—

"44A. Any officer authorised by the State Government to exercise notified powers.—Notwithstanding anything contained in this Act, the State Government may by notification authorise any officer to exercise and discharge in lieu of any other authority specified in or under this Act such powers and functions as may from time to time be specified in the notification."

— C. P. & Berar Act III of 1948, S. 5 [16-1-1948].

**MADRAS**

In its application to the pre-reorganised State of Madras, the newly inserted section 44A is the same as the one given under Andhra Pradesh.

— Madras Act XX of 1948, S. 5 [21-12-1948].

**MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra, after section 44, the following new section shall be inserted, namely:—

"44A. Transport officers to exercise notified powers.—Notwithstanding anything contained in this Act, the State Government may by notification in the Official Gazette authorise the State Motor Transport Officer or a Regional Transport Officer to exercise and discharge in lieu of any other authority prescribed by or under this Act such powers and functions as may from time to time be specified in the notification."

— Bom. Acts VII of 1947, S. 5, [23-3-1947] and XV of 1956, S. 4 [19-4-1956].

**VIDARBHA**—Section 44A as inserted by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha region of the State of Maharashtra.

**PUNJAB**

In its application to the pre-reorganised State of Punjab, after section 44 insert the following new section, namely:—

"44A. State Transport Commissioner and Deputy State Transport Commissioner or their subordinates to exercise notified powers.—The State Government may appoint a State Transport Commissioner and one or more Deputy State Transport Commissioners and notwithstanding anything contained in this Act, may by notification, authorise such Commissioner and Deputy State Transport Commissioners or any officer subordinate to them, to exercise and discharge, in lieu of any other authority prescribed by or under this Act, such power and functions as may be specified in the notification."

— E. P. Act XXVIII of 1948, S. 4 [12-7-1948].

**WEST BENGAL**

In its application to the State of West Bengal, after section 44 insert the following new section, namely:—

"44A. Transport officers to exercise notified powers.—(1) The State Government may by notification in the Official Gazette appoint for the State a State Transport Officer and may

**Section 44-A (Andh Pra) — Note 1 contd.]**

doubt a subordinate of the commissioner even though that subordination has not been statutorily defined. 1959 Andh Pra 413 (417) [AIR V 46 C 117] : ILR (1959) Andh Pra 375 (FB).

[3] In order to determine whether the officers are subordinate or not for the purposes of this section the test is whether in the performance of their various duties they are subject to the direction and control of a superior officer or are independent officers subject only to such directions as the statute gives. A subordination in the sense that a review of such of their determinations as are quasi-judicial may be had or not is not the test contemplated. 1959 Andh Pra 413 (416) [AIR V 46 C 117] : ILR (1959) Andh Pra 375 (FB).

[4] The word "officer" in this section means an individual who is invested with the authority and is required to perform the duties incidental to an office. 1959 Andh Pra 413 (416) [AIR V 46 C 117] : ILR (1959) Andh Pra 375 (FB).

**Section 44-A (Madras) — Note 1**

[1] The Regional Transport Officer is an officer subordinate to the Transport Commissioner within the meaning of S. 44-A. Hence the Government of the State may by notification validly confer on him the authority, in view of any other authority prescribed by or under the Act, to discharge the functions and powers of that authority. 1960 SC 1191 (1198, 1198, 1199) [AIR V 47 C 208]. (Hence Regional Transport Officer can vary the conditions of a permit by virtue of a power conferred by such a notification of the Government—AIR 1957 Mad 599 (FB), *Overrule*.)

**Section 44-A (Punjab) — Note 1**

[1] Section 44-A of the Act (as inserted by the East Punjab Amendment Act, 1948) providing for the appointment of a State Transport Commissioner in addition to those provided in the Central Act, does not come in conflict with the Central Act inasmuch as that Act does not prohibit appointment of any other authority than those mentioned in S. 44.

in like manner appoint for such area within the State as may be specified in the notification, a Regional Transport Officer.

(2) Notwithstanding anything contained in this Act, the State Government may by notification in the Official Gazette authorise the State Transport Officer or a Regional Transport Officer to exercise and discharge in lieu of any other authority prescribed by or under this Act such powers and functions as may from time to time be specified in the notification."

— W. B. Act XIX of 1951, S. 6 [13-7-1951].

## \*[45. General provision as to applications for permits.

Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles:

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business.]

[a] *Substituted* for the original section by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 39 [w. e. f. 16-2-1957].

## OBJECTS AND REASONS

"The existing section 45 has led to certain practical difficulties in regard to the grant of permits for inter-regional and inter-State routes. The amendment seeks to remove this

lacuna by laying down clearly the authorities to whom applications for permits should be made in such cases."

—S. O. R.

## STATE AMENDMENTS

### ANDHRA PRADESH

In its application to the pre-reorganised State of Andhra Pradesh excluding the transferred territories, to section 45 *add* the following Proviso, namely,—

"Provided that the State Government may, by notification in the Official Gazette, direct that application for such class of permits and in such region as may be specified in the notification, shall be made to the State Transport Authority."

—Mad. Act XX of 1948, S. 6 [21-12-1948].

### BIHAR

In its application to the State of Bihar, Proviso *added* to section 45 is the same as the one given under Andhra Pradesh.

—Bih. Act XXVII of 1950, S. 6 [21-7-1950].

### MADHYA PRADESH

MAHAKOSHAL.—In its application to the Mahakoshal region of the State of Madhya Pradesh, Proviso *added* to the section 45 is the same as the one given under Andhra Pradesh.

—C. P. & Berar Act III of 1948, S. 6 [16-1-1948].

### Section 44-A (Punjab) — Note 1 (*contd.*)

Hence it cannot be said that its provisions are impliedly repealed by the enactment by the centre of the Motor Vehicles (Amendment) Act, 100 of 1956. 1959 Punj 1 (6) [AIR V 46 C 1] : ILR (1958) Punj 1590 (FB).

### Section 45 — Note 1

[1] In a case decided under this section before it was amended by the Motor Vehicles (Amendment) Act of 1956 it was held that a direction issued by the Provincial Transport Authority to the effect that in all cases where the route of a transport vehicle lay over two regions the applicant for permit must apply only to the Regional Transport Authority of that region in which the longest stretch of that route lay was not a valid direction as it

was opposed to the provisions of the section. Hence it was held that an application made to the Regional Transport Authority of the region in which the applicant resided and the permit granted thereon were not invalid in spite of the directions of the Provincial Transport Authority. 1951 Orissa 81 (83) [AIR V 38 C 26] (DB).

[2] An application for a permit by a State Transport undertaking under S. 68-F must also comply with the provisions of Ss. 45, 46 and 47. 1960 S C 350 (352) [AIR V 47 C 58]. (Hence a permit granted on application which is in breach of S. 57 (2) is liable to be quashed.)

[3] The possession of a motor vehicle is not a condition precedent to the presentation of an application for a permit. 1960 Mys 33 (34, 55) [AIR V 47 C 7].

**MADRAS**

In its application to the pre-reorganised State of Madras, excluding the transferred territories, Proviso added to section 45 is the same as the one given under Andhra Pradesh.

—Mad. Act XX of 1948, S. 6 [21-12-1948].

**MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra, Proviso added to section 45 is the same as the one given under Andhra Pradesh.

—Bom. Act VII of 1947, S. 6 [23-3-1947].

**PUNJAB**

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, Proviso added to section 45 is the same as the one given under Andhra Pradesh.

—E. P. Act XXVIII of 1948, S. 5 [12-7-1948].

**WEST BENGAL**

In its application to the State of West Bengal, Proviso added to section 45 is the same as the one given under Andhra Pradesh.

—W. B. Act XIX of 1951, S. 7 [13-7-1951].

**\*[46. Application for stage carriage permit.**

An application for a permit in respect of a service of stage carriages or to use a particular motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall, as far as may be, contain the following particulars, namely :—

- (a) the route or routes or the area or areas to which the application relates;
- (b) the number of vehicles it is proposed to operate in relation to each route or area and the type and seating capacity of each such vehicle;
- (c) the minimum and maximum number of daily services proposed to be provided in relation to each route or area and the time-table of the normal services;
- (d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions;
- (e) the arrangements intended to be made for the housing and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggage;
- (f) such other matters as may be prescribed.]

[a] Substituted for the original S. 46 by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 40 [w. e. f. 16-2-1957].

**Section 46 — Note 1**

[1] An application under Chapter IV could be made either by an individual or by a State Transport Undertaking. By the enactment of Chapter IV-A the State Transport Undertaking has not lost its right to make an application under Chapter IV. Chapter IV-A confers certain additional rights to a State Transport Undertaking which such an undertaking did not have before the enactment of Chapter IV-A. 1960 Bom 88 (90) [AIR V 47 C 24].

[2] Any State transport undertaking when it applies under S. 68 F (1) must comply with provisions of S. 46. 1960 S C 350 (352) [AIR V 47 C 58]; 1960-2 S C R 130.

[3] The possession of vehicle is not a condition precedent to the presentation of an application for permit under S. 46. 1960 Mys 33 (35) [AIR V 47 C 7] (DB).

[4] The R. T. A. inviting by a notification under S. 57 (2) applications for permits to relieve the congestion existing on a route already served by a stage carriage service is not justified in refusing an application made in response to its invitation on the ground that it has failed to mention the particulars of the proposed time-table. The omission in the case does not vitiate the application not only because the applicant, in the circumstances of the case can leave it to the R. T. A. to fix the

time-table under S. 48 (3) but also because he is required by S. 46 as it stands amended to state particulars only "as far as may be." 1960 Mys 33 (37) [AIR V 47 C 7] (DB).

[5] An application for permit made when S. 46 as it stood before its amendment in 1956 was in force must be rejected as no application at all where it has failed to set out the particulars required by the section. The section as it stood unamended was mandatory in its nature and hence a noncompliance with its requirements amounted to an illegality and not a mere irregularity. The fact that during the pendency of the application the section was amended and by the amendment it lost its mandatory character does not affect the disposal of the pending application because the question in that case is whether it amounted to an application under the Act at all and could have been validly entertained and that has to be decided only as the section stood at the time of its presentation. In this view it is also unnecessary to decide whether S. 46 as amended is retrospective and should be applied to the case. 1960 Mys 90 (92, 93) [AIR V 47 C 25] (DB) + 1960 Mys 72 (73) [AIR V 47 C 17]; ILR (1958) Mys 773 (DB).

[6] The Act contains no provision that a treasury challan for the stamp fee payable

## OBJECTS AND REASONS

*Amendments made in sections 46, 47 and 48 by Act C of 1956.*—"Bus services with a fleet of buses will in future be a more common feature than single bus services and the proposed amendments are designed to meet this changing situation. Opportunity is taken in the amendment of section 46 of the Act to include among the particulars which must be supplied in the application for a stage carriage permit details regarding the number and

timing of services, and the arrangements proposed for the maintenance of vehicles and the comfort and convenience of passengers, etc. Section 47 of the Act makes it obligatory on Regional Transport Authority to consider only the adequacy of existing road services, but not rail, river, or any other kind of service, or prospective services to be operated either by the applicant or any one else. Section 48 remedies these defects." —S. O. R.

### 47. Procedure of Regional Transport Authority in considering application for stage carriage permit.

"[(1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely :—

- (a) the interest of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;
- (f) the condition of the roads included in the proposed route or area;

#### Section 46 — Note 1 (contd.)

under the Rules on an application for a permit should be filed along with the application itself. Hence, if the Rules also contain no such provision, an application filed within the time allowed by S. 57 cannot be rejected as time-barred because the treasury challan was not filed with the application but only later on separately after the expiry of the prescribed period of limitation. 1959 Pat 111 (112) [AIR V 46 C 26] (DB).

### SECTION 47 — SYNOPSIS

1. Sub-s. (1)—Scope.
2. "The interests of the public generally"—Clause (a).
3. Advantages to the public—Clause (b).
4. Adequacy of existing transport service—Clause (c).
5. Benefit to any locality—Clause (d).
6. Operation by applicant of other transport services—Clause (e).
7. Condition of roads—Clause (f).
8. State amendments — Clauses (g) and (h) added by Orissa State.
9. Representations of persons interested in road transport.
10. Preference to Co-operative Societies—Sub-s. (1), Proviso.
11. Power to refuse permit under sub-s. (2).
12. Power to limit the number of stage carriages on a route—Sub-s. (3).
13. "Route," meaning of.

1. Sub-s. (1)—Scope. — [1] Section 47 makes two-fold provision: firstly, that in considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the matters enumerated in clauses (a) to (f), and, secondly, that it shall also take into consideration any representation made by persons or authorities mentioned in the section. 1959 All 197 (201) [AIR V 46 C 48].

[2] The power to consider the adequacy of existing road passenger transport services is a very reasonable power and hence it cannot be said that Cl. (c) of sub-s. (1) is bad as contravening Art. 19 (1) (g) of the Constitution. 1951 All 257 (271) [AIR V 58 C 51] : I L R (1951) 1 All 269 (FB) (Per Malik C. J.)

[3] The provisions of Sub-s. (1) governs applications for renewal of permits. 1955 Sau 57 (59) [(S) AIR V 42 C 22] (DB)+1956 Madh B 175 (176) [AIR V 43 C 74] (DB).

[4] The section is not confined to the grant of permits on existing routes only. The grant of permits on new routes is also within its comprehension. ('60) 1960-2 Andh W R 447 (450) (DB).

[5] In dealing with an application for the renewal of a permit the Regional Transport Authority has to take into consideration the matters mentioned in this section only where the original permit had been validly granted. Where the original permit was ab initio null and void it can straightway dismiss the application for its renewal on that ground alone without reference to any of the matters mentioned in this section. 1957 All 254 (256) [(S) AIR V 44 C 73] (DB).

and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies :

Provided that other conditions being equal, an application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over applications from individual owners.]

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened :

Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions.

[(3) A Regional Transport Authority may, having regard to the matters mentioned in sub-section (1), limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region.]

[a] Substituted for the original sub-section (1), by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 41 w. e. f. 16-2-1957]. [b] Inserted, *ibid.*

### OBJECTS AND REASONS

See under section 46.

*Proviso to sub-section (1).* "The Committee are of the opinion that while considering applications for stage carriage permits, the Regional Transport Authority should, other

conditions being equal, give preference, as far as may be, to registered co-operative societies over individual operators. A suitable proviso has accordingly been inserted."

—J. C. R.

### Section 47—Note 1 (contd.)

[6] Unless a State Transport Corporation has chosen to act under the provisions of the newly introduced Chapter IVA an application for a permit made by it would be governed by the considerations contained in this section. Hence an application for a permit from the State undertaking which is instituting its services in competition with other operators must be treated on its own relative merits in comparison with the merits of these other operators. 1960 Bom 278 (284) [AIR V 47 C 80]; ILR (1960) Bom 87. (Chapter IVA gives the State only an additional right. It is not intended to supersede the provisions of Chapter IV in all cases where the State proposes to run its own transport services.)

[7] The conditions which under this section should be taken into consideration by the Transport authority in deciding whether to grant or refuse a stage carriage permit should be applied by the government also when it varies the conditions in a stage carriage permit in exercise of the powers conferred on it by S. 48A introduced into this Act by the Motor Vehicles (Madras Amendment) Act, 20 of 1948. 1957 Andh Pra 978 (981) [AIR V 44 C 313]. (Hence Government cannot ignore the question of public interest which is one of the conditions mentioned in S. 47.) \* 1948 Mad 400 (407) [AIR V 35 C 197 (DB)]. (Government Order No. 3808 which directed the R. T. A. to grant only temporary permits without giving any indication of the manner in which the travelling public were to be benefited and R. 150 Madras Motor Vehicles Rules which enabled

such an order to be passed were both declared to be invalid.)

[8] The Regional Transport Authority dealing with the applications for permit is bound to consider the provisions of S. 47. Of course, if nobody raised the question which is relevant to S. 47 (1) it does not follow that the Regional Transport Authority would have to act *suo motu*. But if the point is raised or is obvious from the facts placed before the Regional Transport Authority it is bound to consider it. 1956 Cal 496 (497) [AIR V 43 C 143].

[9] The considerations mentioned by sub-s. (1) are not exhaustive. The Regional Transport Authority can therefore take into consideration other matters which are allied or germane to the question to be decided by it. 1957 Cal 638 (641, 642) [(S) AIR V 44 C 165] \* 1959 Madh Pra 320 (321) [AIR V 46 C 107] (DB). (Grounds not mentioned in section but germane to the grant of permit can be considered.) \* 1959 Mad 492 (495) [AIR V 46 C 156]; ILR (1959) Mad 641 \* 1957 All 254 (256) [(S) AIR V 44 C 73]. (Appellate authority declaring permit null and void but permitting the owner to ply the buses during the remaining period — Order directing the Regional Transport Authority not to treat the permit as valid and renewable — Regional Transport Authority in dealing with the application for renewal must take the illegality of the permit into consideration and refuse the application even though that is not a matter mentioned in S. 47.) \* (57) 61 Cal W N 779 (788). (Obiter.) \* 1956 Ajmer 41 (45)



## STATE AMENDMENTS

## MADHYA PRADESH

**MAHAKOSHAL.**—In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 47 after the words "Regional Transport Authority" wherever they occur *insert* the words "or the State Transport Authority on the issue of a direction under the Proviso to section 45."

—C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in sub-sections (1) and (2) after the words "Regional Transport Authority" *insert* the words "or the State Transport Authority."

—Bom. Act VII of 1947, S. 7 [23-3-1947].

**VIDARBHA** — The amendment made in this section by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

## ORISSA

In its application to the State of Orissa, after clause (f) of sub-section (1) of section 47 *insert* the following clauses, namely,—

"(g) other conditions being equal, in the interest of proper co-ordination of transport facilities, the expediency of giving due consideration to a State Transport Service;

(h) the necessity for preventing unhealthy competition in any route or routes or area on which the State Transport Service may ply."

—Orissa Act I of 1949, S. 3.

*Note.* — For the date of commencement of this amendment in different districts of the State of Orissa and the consequences that follow on such commencement, see foot-note (a) given under clause (29B) of section 2—State Amendment : Orissa.

## WEST BENGAL

In its application to the State of West Bengal, in sub-sections (1) and (2) of section 47 after the words "Regional Transport Authority" *insert* the words "or the State Transport Authority."

—W. B. Act XIX of 1951, S. 8 [13-7-1951]

## Section 47 — Note 1 (contd.)

[AIR V 43 C 31] \* 1955 Raj 19 (27) [AIR V 42 C 8]; I L R (1953) 5 Raj 931 (DB) \* 1954 Assam 219 (222) [AIR V 41 C 62]; I L R (1955) 7 Assam 23 (DB) \* 1952 Mad 300 (305) [AIR V 39]; I L R (1952) Mad 698 (DB). (The Regional Transport Authority can take into consideration other matters germane to the question to be decided in addition to the matters mentioned in sub-s. (1).)

[10] In disposing of applications for permits the Regional Transport Authority cannot take into his consideration those matters which any person who is called upon to decide judicially the question whether a permit should be granted or refused would reasonably consider as irrelevant to the question. 1959 Cal 447 (449) [AIR V 46 C 122] (DB) \* 1956 Andh 217 (221) [AIR V 43 C 81]; I L R (1956) Andh 712 (DB). (Regional Transport Authority cannot take into its consideration matters which are extraneous, or irrelevant or not germane to the matters mentioned in sub-s. (1).) \* 1951 Him Pra 36 (47) [AIR V 38 C 11]. (Nationalisation of transport or that the permits in question were allotted to the Government of the State under an arrangement when the State was carved out of an existing State or the interests of the State or of the public at large are considerations extraneous to the Act. Refusal to renew permit on any of these grounds is *ultra vires* the powers of the Transport Authority.)

[11] The possession of the vehicle and not the ownership is the deciding consideration for the issue of a permit for a bus which is a stage carriage within the meaning of the definition contained in this Act. 1952 S C 192 (194) [AIR V 39]; 1952 S C R 583.

[12] The fact that the applicant for permit has already a good trade or business is not a valid ground for rejecting his application. 1960 Assam 100 (106) [AIR V 47 C 28] (DB).

[13] The fact that one of the applicants for permit is a political sufferer and is in bad need of some help is not germane to the question as to whether he should be selected in preference to the other applicants. That is a totally extraneous and irrelevant consideration. 1957 Cal 638 (642) [(S) AIR V 44 C 165].

[14] That the petitioner had suffered on account of a particular route is not a consideration which is even allied to the matters mentioned in S. 47. 1960 Mys 321 (322) [AIR V 47 C 114] (DB).

[15] A promise given by the Government to a potential applicant to give it carriage permits when a particular route is opened in the future is not a consideration which can be validly taken into account by the transport authorities. 1959 Punj 473 (475) [AIR V 46 C 143]; I L R (1959) Punj 1644. (Such a promise cannot come within cl. (a) of sub-s. (1) however widely that is interpreted and is therefore a consideration which is extraneous to the Act.)

[16] The fact that the Government has decided upon pursuing in future a policy of nationalization of transport is a wholly irrelevant consideration in dealing with the question whether a permit should be granted or refused. 1959 Cal 447 (449) [AIR V 46 C 122] (DB) \* 1960 Bom 278 (284) [AIR V 47 C 80]; I L R (1960) Bom 87 (DB) \* 1951 Him Pra 36 (47) [AIR V 38 C 11].

[17] That the State is proposing to run their own transport services in the area is not a valid consideration on which the Transport authority can refuse to grant a permit to an applicant. 1956 Pat 73 (78) [(S) AIR V 43 C 20] (DB).

[18] The matters mentioned by sub-s. (1) must be kept in mind by an appellate authority as well in disposing of an appeal against an order of a Regional Transport Authority



**Section 47 — Note 1 (contd.)**

granting or refusing to grant a permit. 1956 Madh B 231 (236) [AIR V 43 C 90] (DB) + 1960 Assam 100 (103) [AIR V 47 C 28]. (Appellate board in dealing with an appeal relating to grant of permits cannot take into consideration matters extraneous to the object and purpose of the Act.) \* 1957 Punj 35 (37) [AIR V 44 C 13]; 1 L R (1957) Punj 315. (Representations of even temporary permit-holders have to be taken into consideration under S. 47. Hence the appellate authority also must observe that procedure in spite of the provisions of cl. (a) of S. 64.) \* 1953 Nag 264 (265) [AIR V 40 C 111]; 1 L R (1953) Nag 486 (DB). (Appellate authority setting aside order of Regional Transport Authority and deciding to grant permit must follow S. 47. Hence it must take into its consideration, the representation made by an association or individual already providing road transport facilities.)

[19] Section 47 (1), Motor Vehicles Act, merely enumerates various considerations which the authority empowered to grant a permit shall have regard to, when dealing with applications for permits. That section itself does not require that any application to open a new route should be notified. 1960 Mad 231 (235) [AIR V 47 C 72].

2. "The interests of the public generally"—Clause (a).—[1] The Regional Transport Authority has to take into account the interest of the public generally in deciding to grant or refuse a permit. 1955 Sau 57 (59) [(S) AIR V 42 C 22] (DB).

[2] The expression "interests of the public," which is found in the Act, relates to the interests of the travelling public, for whose convenience and need stage carriages are provided. 1948 Mad 400 (407) [AIR V 35 C 197] (DB).

[3] Clause (a) of sub-s. (1) is wide enough to cover the interests of the public generally besides the interest of the travelling public. 1956 Mad 349 (351) [(S) AIR V 43 C 107] ILR (1956) Mad 1272.

[But see 1956 All 594 (595) [AIR V 43 C 197].]

[4] Which of the several candidates for a permit should be preferred from the point of view of the public interest is a question of fact. In deciding that question the most material thing which should be considered is whether the applicant for the permit could be depended upon to manage his transport business efficiently and with particular attention to the convenience of the travelling public. 1956 Madh-B 231 (236) [AIR V 43 C 90] (DB).

[5] In judging what is in the public interest the R.T.A. is entitled to take into its consideration the circumstances which existed in the past, those which exist at the time it is judging the question and those which are likely to exist in the future. Hence it does not act wrongly in taking into account the previous convictions of an applicant in judging the interest of the public. 1955 N U C (All) 3589 [AIR V 42].

[6] The Regional Transport Authority can validly take into its consideration the decrease

or the increase in the operational efficiency of the several applicants in deciding upon their relative merits even though such a change has taken place only after the making of the applications for the permit. 1960 Ker 83 (83) [AIR V 47 C 34].

[7] The better facilities possessed by one of the several applicants for a permit for the operation of a bus service would be to the interest of the public generally and an advantage to the public of the service to be provided and therefore would become an overriding factor in his favour when in the other things all the applicants are equal. 1956 SC 463 (468) [(S) AIR V 43 C 80]; 1958 SCR 258.

[8] The reason in awarding the permit in favour of one operator, that he is a resident of a place which is on the route in question, while the other operator is a resident of a place far away from the route in question, is neither an irrelevant nor an improper consideration. 1956 Andh 217 (221) [AIR V 43 C 61]; ILR (1956) Andh 712 (DB).

[9] The fact that one of the applicants has a monopoly on the route in the sense that he already holds all the permits on the route and there is a likelihood of the applicant abusing the monopoly is a valid consideration for granting the additional permit to another person. Such a fact is one which affects the interests of the public. 1959 Mad 492 (498) [AIR V 46 C 156]; ILR (1959) Mad 641 (DB). (Clause (a) itself is wide enough to cover any ground not expressly mentioned in sub-s. (1). It is not desirable to restrict the discretion of the authority to grant or refuse a stage carriage permit on considerations of public interest.)

[10] Congestion in the bus stand is a very important matter affecting the interest of the travelling public as well as the other section of the public and hence it cannot be treated as a consideration extraneous to the "interest of the public generally" mentioned in Cl. (a) of sub-s. (1). 1959 Cal 447 (448) [AIR V 46 C 122] (DB) \* 1958 Cal 652 (653, 654) [AIR V 45 C 161]. (The matter comes also within the expression "the condition of the roads included in the proposed route.")

[11] The Regional Transport Authority cannot be said to have taken into account a matter extraneous to S. 47 where in deciding that it is in the interest of the public to grant the permit to a particular applicant it has considered the fact that the applicant or his father was an old operator at one time. 1955 Raj 19 (27) [AIR V 42 C 81]; ILR (1953) 3 Raj 931 (DB) \* 1956 Ajmer 41 (45) [AIR V 43 C 31].

[12] The fact that the applicant has been deliberately and habitually committing default in the payment of taxes in respect of the vehicles is a circumstance which could be taken into consideration in arriving at a decision as to whether the grant of permits to a person in the position of the applicant is in the interest of the general public. 1955 Mad 205 (206) [(S) AIR V 42 C 51] (DB).

[13] The sector qualification as well as the consideration that a bus owner should be made a fleet owner are considerations as to

**Section 47 — Note 2 (contd.)**

the interest of the public generally and would fall within the purview of S. 47. 1959 Mys 72 (74) [AIR V 46 C 28] : ILR (1958) Mys 472 (DB).

[14] The encouragement by the traffic authorities of operators already in the field with a view to enable them to own a number of stage-carriages is in the public interest, as such operators would ensure continuity and security of service better than operators owning only one stage-carriage or two. (58) 1958 Andh L Tim 1074 (1077).

[15] A person who can build up an economic fleet will be in a position to render better and satisfactory service to the public and therefore it may be in the public interests to help him to build up an economic fleet. 1956 Andh 217 (221) [AIR V 43 C 61] : ILR (1956) Andh 712 (DB).

[16] The question of nationalization of transport can fall under the head of general public interest mentioned in Cl. (a) of sub-s. (1) and can be lawfully taken into consideration by the R.T.A. under that head. 1959 Cal 447 (449) [AIR V 46 C 122] (DB) \* 1958 Cal 652 (653) [AIR V 45 C 161].

[17] Clause (a) is in the interest of the public and is therefore saved by Cl. (6) of Art. 19 of the Constitution from unconstitutionality. 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

**3. Advantages to the public — Clause (b).** — [1] The Regional Transport Authority is entitled to enquire from the applicants what advantages they are offering to the public in the shape of lower fares and consider those offers in that connection. 1955 Sau 57 (59) [(S) AIR V 42 C 22] (DB). (But it cannot require the applicants to accept a rate lower than the one prescribed by the Government and grant a permit at such lower rate.)

[2] Possession of better buses by one of the applicants is a fact which the Regional Transport Authority can take into its consideration in selecting an applicant for granting the permit. 1956 Ajmer 41 (45) [AIR V 43 C 31].

[3] That in its opinion the buses of the rival applicant viz., the State Government offered greater comfort and advantages to the public than the buses of the applicant for renewal of permits is sufficient to justify the refusal of the authority to allow the application for renewal. The facts that the buses of the latter also satisfy the requirements as to space etc., and that the applicant for renewal had been operating those buses along with the State buses do not in anyway constitute a compelling reason for the renewal of the permits. 1959 All 197 (204) [AIR V 46 C 48].

[4] Clause (b) is interest of the public and is therefore valid under Cl. (6) of Art. 19 of the Constitution. 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

**4. Adequacy of existing transport service — Clause (c).** — [1] A permit cannot be refused on the ground that there is no need for extension of service. 1956 Vindh Pra 25

(26) [AIR V 43 C 13] \* 1953 Mad 279 (290, 291) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

[2] Clause (c) of sub-s. (1) in so far as it provides that the effect of the proposed service upon the existing service must be taken into account is not saved by Cl. (6) of Art. 19 of the Constitution from invalidity because it is in the interests of the existing operators and not the public. 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

[See also 1957 Pat 340 (347) [(S) AIR V 44 C 107] (DB). (It is doubtful whether matters directed to be taken into consideration under Cl. (c) are at all consistent with the restrictions suggested in Art. 19 (6) of the Constitution.)]

[But see 1956 Raj 142 (144) [(S) AIR V 43 C 43] : ILR (1956) 6 Raj 751 (FB).]

[3] The granting of additional permits on a route on which the existing stage carriages are not running daily but only by rotation cannot be said to be as a matter of general proposition repugnant to the condition relating to the adequacy of existing transport services laid down in clause (c) of sub-s. (1). The question whether the grant is repugnant must be decided broadly on the merits of each case. 1956 Raj 142 (145) [(S) AIR V 43 C 43] : ILR (1956) 6 Raj 751 (FB).

[4] Clause (c) of S. 47 (1) comes into play when after limitation of the number of vehicles on any public road certain permits are granted, and afterwards a fresh applicant comes on the scene for the purpose of applying for a new permit. 1957 Raj 237 (241) [AIR V 44 C 90] : ILR (1955) 5 Raj 545 (DB).

**5. Benefit to any locality — Clause (d). —**

[1] The transport authority can take into account the nature of the locality before deciding whether the use of transport vehicles could be permitted in that locality. 1953 Mad 279 (290) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB). (Thus the narrowness of streets or the congested nature of the locality is a valid reason for restricting the use of buses.)

[2] Clause (d) is in the interest of the public and is therefore saved by Cl. (6) of Art. 19 of the Constitution from invalidity. 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB) \* 1951 All 257 (271) [AIR V 38 C 51] : ILR (1951) 1 All 269 (FB). (Per Malik C. J.)

**6. Operation by applicant of other transport services — Clause (e). —**

[1] The fact that the operator is an existing operator in respect of a part of the route in question is not an extraneous or irrelevant consideration. 1956 Andh 217 (221) [AIR V 43 C 61] : ILR (1956) Andh 712 (DB).

[2] That the granting of a permit would be injurious to the interests of the existing operators is not a valid consideration for refusing a permit. The benefit to the general public alone should guide the Transport authority in deciding whether a permit should be granted or refused. 1956 Vindh Pra 25 (26) [AIR V 43 C 13] \* 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

**Section 47 — Note 6 (contd.)**

[3] The transport authority cannot take into consideration the fact that the existing operators are running other services which are unremunerative and grant them permits with a view to compensate them for those unremunerative services. 1956 Vindh Pra 25 (26) [AIR V 43 C 13] \* 1958 Mad 279 (291) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

[4] Clause (e) which is in the interest of the permit-holders and not the public is not saved from invalidity by cl. (6) of Art. 19 of the Constitution. 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

[See also 1957 Pat 340 (347) (S) AIR V 44 C 107] (DB). (It is doubtful whether matters directed to be taken into consideration under cl. (e) are at all consistent with the restrictions suggested in Art. 19 (6) of the Constitution.)

[But see 1954 Trav-Co 542 (543) [AIR V 41 C 184] : ILR (1954) Trav-Co 778 (DB) \* 1951 All 257 (271) [AIR V 38 C 51] : ILR (1951) 1 All 269 (FB). (Per Malik C. J.)]

**7. Condition of roads — Clause (f). —**

[1] The Transport Authorities in deciding upon granting or refusing the permit for a stage carriage or limiting its number on a particular route can take into its consideration the condition of the road and the question of the necessity for its conservation in the general public interest. 1953 Mad 279 (290) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB).

[2] The congestion in the bus stand is a matter which is covered by the expression "the condition of the roads included in the proposed route". 1958 Cal 652 (653, 654) [AIR V 45 C 161].

[3] Clause (f) in sub-s. (1) is in the interest of the public and is therefore saved from unconstitutionality by cl. (6) of Art. 19. 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB) \* 1951 All 257 (271) [AIR V 38 C 51] : ILR (1951) 1 All 269 (FB). (Per Malik C. J.)

**8. State amendments — Clauses (g) and (h) added by Orissa State. —** [1] Clause (g) which has been introduced into sub-s. (1) by the Orissa Motor Vehicles (Amendment) Act, 1 of 1948 can be given effect to in disposing of an application for a permit only where it is in force at the relevant time, in the region to which the permit relates, having been already applied to that region by a notification of the Government. Hence where there has been no such notification and the Regional Transport Authority acting on an erroneous impression that the clause applies rejects an application for renewal of a permit and gives preference to the State Transport Authority its order must be set aside as unsustainable. 1957 Orissa 121 (123) [AIR V 44 C 38] : ILR (1957) Cut 117 (DB).

[2] Clauses (g) and (h) added to sub-s. (1) by the Orissa Motor Vehicles (Amendment) Act, 1 of 1948 would apply even to the applications for permits pending on the date on which they have been brought into force in the particular region for which the permits

had been applied for. 1957 Orissa 121 (124) [AIR V 44 C 38] : ILR (1957) Cut 117 (DB).

**9. Representations of persons interested in road transport. —** [1] The provisions of sub-s. (1) apply to an application for the renewal of a permit. Hence in deciding whether the application should be granted or refused the Regional Transport Authority can take into account the representations made by any person, body or association interested in road transport facilities. 1956 Madh-B 175 (176) [AIR V 43 C 74] (DB) \* 1955 Sui 57 (59) (S) AIR V 42 C 22] (DB).

[2] An association of persons owning and plying omnibuses is an association interested in the provision of road transport facilities within the meaning of S. 47 of the Motor Vehicles Act. The fact that the association is not registered and is, therefore not a legal entity, is not in itself a bar to its preferring an objection to the grant of a permit and later an appeal. 1951 Cal 255 (257, 258) [AIR V 38 C 53] : ILR (1951) 2 Cal 437 (SB).

[3] This section confers a statutory right of representation upon an association interested in the provision of road transport facilities. That right implies that the association is affected by the grant of a permit and therefore it has like any other member of the public a legal right to see that the provisions of law relating to the grant of a permit are observed. 1957 Cal 444 (446) (S) AIR V 44 C 121].

[4] The Regional Transport Authority has to take into consideration even the representation of the holder of a temporary permit at the time of granting a permit. 1957 Punj 35 (37) [AIR V 44 C 13] : ILR (1957) Punj 315.

[5] Objections or representations by persons already providing transport facilities and by local and police authorities need not necessarily be in writing. Sub-s. (4) of S. 57 does not apply to them. (55) ILR (1955) Trav-Co 52 (64).

[6] The provisions of sub-s. (1) are mandatory and not directory. Hence the Regional Transport Authority cannot grant permits without giving an opportunity to the persons who are already conducting services along or near the proposed route to make representations and of being heard. 1953 Trav-Co 74 (75, 76) [AIR V 40 C 26] : ILR (1953) Trav-Co 234 \* (60) 1960-2 Andh W R 447 (450) (DB).

[7] The Transport Authority must give sufficient time for making representations and also notify the time, date and place of the meeting at which these representations would be heard and considered. 1960 Manipur 36 (40) [AIR V 47 C 10].

[8] In this case the Court without deciding the question expressed its disinclination to accept the view that the statutory obligation to consider the representations made carried with it a further implied obligation to give notice to the bus operators who as persons already providing road transport services are entitled to make representations. 1957 Mad 536 (540) (S) AIR V 44 C 157] : ILR (1957) Mad 908.

[9] Besides the parties interested in the grant of stage carriage permits and those in-

**Section 47 — Note 9 (contd.)**

interested against it the police authority of the locality is also entitled to be heard under the section. A report put in before the Regional Transport Authority by the police authority is meant more for the use of the Regional Transport Authority in granting or refusing to grant a permit rather than for the use of the several parties concerned. Where that report is read out before the parties and they neither object to its use nor ask for adjournment on the ground of surprise or for offering materials against the report the Regional Transport Authority is entitled to use that report straightway without anything further. In such circumstances it cannot be said that the Regional Transport Authority by not giving copies of the report to the parties and adjourning the case has denied them the opportunity of making their representations and thereby has acted contrary to the principles of natural justice. 1957 S C 232 (236) [(S) AIR V 44 C 32] : 1957 S C R 98.

[10] There is nothing in S. 47 which requires the Regional Transport authority to give a hearing to an applicant for permit. 1955 N U C (All) 3589 [AIR V 42].

[11] Where there are no representations from the persons who have been given a right under this section and the Regional Transport Authority has to decide the question of granting a permit only with reference to the matters mentioned in cls. (a) to (f) there is no necessity either to hear the petitioner after giving him notice or to furnish him with the material on which the authority proposes to act. 1959 All 197 (202, 203) [AIR V 46 C 48].

[12] Representations of a new applicant even though that applicant is the State Government cannot be taken into consideration by the transport authority to refuse the renewal of a permit. 1951 Him Pra 36 (47) [AIR V 38 C 11].

[13] The decision to open a new route or to vary an existing route is not an order under S. 47. It is purely an administrative measure involving matters of general interest or policy. At the stage, when the transport authorities take the decision, the existing operators do not come into the picture at all except as other members of the public and as such the authorities are not bound to hear them or furnish them with copies of the reports of their officers. ('60) 1960-2 Andh W R 447 (451, 452) (DB).

[14] An order rejecting the petition of objection under S. 47 is irregular, where the District Magistrate who is also the chairman of the Regional Transport Authority purports to dispose of such objection in his capacity of District Magistrate and not as Chairman of the Regional Transport Authorities. ('57) 61 Cal W N 779 (785).

**10. Preference to Co-operative Societies — Sub-s. (1), Proviso.**—[1] Under the proviso to sub-s. (1) a Co-operative society is entitled to preference not only over individuals but also over companies and partnership firms. 1959 Punj 473 (474) [AIR V 46 C 143] : I L R (1959) Punj 1644. (The word "individual" is

used in the proviso in the sense of "person" and embraces artificial or corporate persons as well as natural persons.)

[2] The sole purpose of the proviso to sub-s. (1) is to give a preference to co-operative societies. It is not concerned with stating who can apply for permits. Therefore the fact that it uses the word individual cannot warrant the conclusion that the Government, even on the assumption that it is not an individual owner, cannot be an applicant for permit. 1960 S C 801 (806) [AIR V 47 C 134].

[3] The proviso which deals with the grant of permits to certain parties applies to clauses (a) to (f) of sub-section (1) and not to the rest of the sub-section which merely lays down that the authorities under the Act shall take into consideration the representation made by certain persons and as such has nothing to do with the subject dealt with by the proviso. 1959 Punj 473 (474) [AIR V 46 C 143] : I L R (1959) Punj 1644.

**11. Power to refuse permit under sub-s. (2).**—[1] The judicial enquiry provided under this section is necessary before any order is passed under S. 48. Hence the Regional Transport Authority can vary the timings of a bus only after hearing the representations of the owner and considering the matters mentioned in this section. 1952 Mad 276 (279) [AIR V 39] : 1952 Cri L Jour 616.

**12. Power to limit the number of stage carriages on a route — Sub-s. (3).**—[1] The object in giving power to the Regional Transport Authority under sub-s. (3) to limit the number of carriages on a route is to avoid congestion. 1958 Cal 652 (654) [AIR V 45 C 161].

[2] The Regional Transport Authority can validly fix a time table allowing the buses to run only by rotation on any route. 1956 Raj 142 (144) [(S) AIR V 43 C 43] : I L R (1956) 6 Raj 751 (FII). (Rule 90 of Rajasthan Motor Vehicles Act casts no obligation on the R. T. A. to fix a time table allowing a bus to run daily.)

[3] The decision taken by a Regional Transport Authority under sub-s. (3) (clause (a) of S. 48 before the amendment of the Act in 1956) is not invalid on the ground of the failure of the Authority to call for representations from the bus owners operating on or near that route and consider them before taking the decision. The bus operators whose interests will in no way be affected by the mere decision have no right to be heard at that stage. It is only when steps are taken to implement that decision and the Authority is considering the grant of a particular permit that they get a right to make representations as persons whose interests are affected. 1959 All 782 (783) [AIR V 46 C 234] (DB) + ('60) 1960-2 Andh W R 447 (453, 454) (DB) + 1958 All 390 (392) [AIR V 45 C 92].

[4] The Appellate authority can increase the number of permits beyond the limit fixed by the R. T. A. for a route under cl. (a) of the unamended S. 48 (which has now become sub-s. (3) of this section after the amendment)

**\*[48. Grant of stage carriage permits.**

(1) Subject to the provisions of section 47, a Regional Transport Authority may, on an application made to it under section 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit :

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) Every stage carriage permit shall be expressed to be valid only for a specified route or routes or for a specified area.

(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :—

(i) that the service or any specified part thereof shall be commenced with effect from a specified date ;

**Section 47 — Note 12 (contd.)**

without giving notice of its intention to do so to the existing operators. 1959 Raj 121 (123) [AIR V 46 C 46] : 1 L R (1959) 9 Raj 120 (DB).

[5] The provision laid down in sub-s. (1) for the consideration of representations made by persons already providing road transport services is at best only a rule of administrative prudence to be followed by the transport authorities in the exercise of the powers given to them under S. 48 and the question of consideration of representation arises only if any such representation is in fact made by the persons already providing road transport facilities. That, in any case, by itself does not give any legal right to such persons to be provided with a notice and hearing before a decision is taken by the transport authorities on the point as to how many stage carriages are to ply on any particular route. 1957 Pat 340 (347) [(S) AIR V 44 C 107] (DB).

[6] The power conferred by sub-s. (3) (clause (a) of S. 48 before the Act was amended in 1956) does not disappear with its first exercise. It survives and is available for being exercised 'from time to time as occasion required'. (158) 1958 Ker L Tim 666 (668).

[7] The power given to the R. T. A. under cl. (a) of S. 48 (now sub-s. (3) of S. 47 after the amendment of 1956) is saved by cl. (6) of Art. 19 of the Constitution even though by the exercise of that power one of the fundamental rights guaranteed by sub-art. (1) (g) of that Article would be interfered with. The power falls within the saving provisions of cl. (6) because it has to be exercised only subject to the consideration set forth in sub-s. (1) of this section which are both reasonable and in the interests of the general public. 1957 Raj 237 (240) [AIR V 44 C 90] : 1 L R (1955) 5 Raj 545 (DB).

[8] Sub-section (3) is inapplicable to the question of increasing the number of buses on a route. It is a provision which relates to the limiting of the number which is incapable of being equated with the idea of increasing the number. (160) 1960-2 Andh W R 447 (453) (DB).

13. "Route," meaning of. — [1] The essence of a route for which a licence for running an omnibus service is granted is that it should run from one terminus to another. In working out a route it is of course necessary to specify the highway to be followed by that route but that would not make the route and the highway the same. A highway is the physical track along which an omnibus runs and the route is an abstract conception of a line of travel between one terminus and another. 1946 P C 157 (140) [AIR V 33 C 43]. (Case decided under S. 54, Ceylon Motor Car Ordinance 45 of 1938 and S. 7 of the Ceylon Omnibus Service Licensing Ordinance 47 of 1942.)

**SECTION 48 — SYNOPSIS**

1. Scope.
2. "Subject to the provisions of S. 47."
3. Grant of permit is in the discretion of R. T. A.
4. Order of R. T. A. must state reasons.
5. Permit cannot be granted for route or area not specified in application—Sub-s. (1), Proviso.
6. Use of vehicle for specified route or area—Sub-s. (2).
7. Sub-s. (3)—General.
8. Conditions of permit.
9. Power of review.

1. Scope.—[1] As the Motor Vehicles Act itself is valid the validity of individual orders passed under the Act by a Transport Authority cannot be questioned on the ground of arbitrariness or unreasonableness by the use of Art. 19 (6) or Art. 14. 1955 Raj 19 (28, 29) [AIR V 42 C 8] : 1 L R (1953) 3 Raj 331 (DB).

[2] Right to obtain permit to ply bus depends on possession of bus and not its ownership. 1953 All 641 (642, 647) [AIR V 40 C 319] : 1 L R (1954) 2 All 402 (DB).

[3] Neither the Act nor the rules require that in order to be eligible to apply for a permit the applicant should possess a vehicle on the date of his application for a permit. 1960 Mys 33 (34, 35) [AIR V 47 C 7] (DB).

- (ii) the minimum and maximum number of daily services to be maintained in relation to any route or area generally or on specified days and occasions ;
- (iii) that copies of the time-table of the service or of particular stage carriages approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area ;
- (iv) that the service shall be operated within such margins of deviation from the approved time-table as the Regional Transport Authority may from time to time specify ;
- (v) that within municipal limits and such other areas and places as may be prescribed, passengers or goods shall not be taken up or set down except at specified points ;
- (vi) the maximum number of passengers and the maximum weight of luggage that may be carried on any specified vehicle or on any vehicle of a specified type, either generally or on specified occasions or at specified times and seasons ;

### Section 48 (contd.)

#### 2. "Subject to the provisions of S. 47."—

[1] Where the Transport Authority refuses to grant a permit for running bus service on grounds other than those mentioned in S. 47, the order is not valid. 1956 Vindh Pra 25 (26) [AIR V 43 C 13] \* 1951 Him Pra 36 (47) [AIR V 38 C 11]. (Considerations as to the permits granted to the petitioners being really the quota of the Himachal Pradesh Government under some inter-State arrangements or as to refusal being in the larger interests of the State or of the public at large, are considerations of extraneous matters outside the scope of the Act.)

[See also 1955 N U C (Trav-Co) 5475 [AIR V 42]. (An order under the section which does not show that the R. T. A. had taken into its consideration the matters mentioned under S. 47 and merely states that it was only fair to grant a permit is not in accordance with law.)]

[2] The resolution of the Regional Transport Authorities passed without considering the representation under S. 47 of the Act is illegal and contravenes the provisions of S. 47. ('57) 61 Cal W N 779 (780).

[3] Under S. 48, as it stood before the amendment of the Act in 1956, it was held that in dealing with applications for permits the Regional Transport Authority was bound to take into its consideration only the matters enumerated under clauses (a) to (f) of sub-s. (1) of S. 47 and not also the representations mentioned in the latter part of that sub-section as that part was only a directory provision. This decision can no longer be considered to be good law after the amendment of the section which lays down that the permit should be granted "subject to the provisions of sub-s. (1)" and not merely "after a consideration of the matters" set forth in that sub-section. 1959 All 782 (783) [AIR V 46 C 234] (DB) \* 1955 N U C (Trav-Co) 2566 [AIR V 42].

**3. Grant of permit is in the discretion of R. T. A. —** [1] No one, even if he satisfies all the prescribed conditions, is entitled to the grant of a permit as of right. ('55) ILR (1955)

Madh B 211 (217) (DB) \* 1955 Sau 57 (60) [(S) AIR V 42 C 22] (DB). (Where the petitioner had been granted the renewal of his permit at a rate below the prescribed minimum, it is not open to him to accept the renewal of the permit and repudiate the rate.)

[2] The grant of a permit is entirely within the discretion of the transport authorities and depends on several circumstances which have to be taken into account. 1952 S C 192 (196) [AIR V 39] : 1952 S C R 583 \* ('56) I L R (1956) 8 Assam 507 (509) \* 1955 Sau 57 (60) [(S) AIR V 42 C 22] (DB) \* ('55) I L R (1955) Madh B 211 (217) (DB) \* 1953 Trav-Co 102 (103) [AIR V 40 C 34] : I L R (1952) Trav-Co 923 (DB).

[3] Whatever principles are adopted as the criterion for making the selection among the applicants, it is necessary that they should apply uniformly and without differentiation. What is necessary is that at any given time there should be one set of rules and regulations governing the disposal of all applications. There should not be two different and opposing principles both in operation at the same time, one being applied to one applicant and the other to the other. In other words, the criteria that are applied must not be with reference to particular applicants but generally with reference to all applicants. 1956 Andh 217 (222) [AIR V 43 C 61] : ILR (1956) Andh 712 (DB) \* 1953 Vindh Pra 49 (51) [AIR V 40 C 24]. (Test of model of the bus based on its year of manufacture when applied only to one of the several applicants for permits offends Art. 14 of the Constitution which lays down the principle of equality before law.)

[4] There is nothing in the Act which precludes the Transport Authorities from granting a permit to a reserve bus or a reserve bus going into operation on the route sanctioned by that permit. 1955 N U C (Trav-Co) 137 [AIR V 42]. (Held the T. C. Motor Vehicles Rules of 1952 did not also prohibit the same.)

[5] There is no provision of the Motor Vehicles Act, 1939, or of the Travancore-Cochin Motor Vehicles Rules, 1952, which in



- (vii) the weight and nature of passengers' luggage that shall be carried free of charge, the total weight of luggage that may be carried in relation to each passenger, and the arrangements that shall be made for the carriage of luggage without causing inconvenience to passengers ;
- (viii) the rate of charge that may be levied for passengers' luggage in excess of the free allowance ;
- (ix) that vehicles of specified types fitted with bodies conforming to approved specifications shall be used :

Provided that the attachment of this condition to a permit shall not prevent the continued use, for a period of two years from the date of publication of the approved specifications, of any vehicle operating on that date ;

- (x) that specified standards of comfort and cleanliness shall be maintained in the vehicles ;
- (xi) the conditions subject to which goods may be carried in any stage carriage in addition to or to the exclusion of passengers ;
- (xii) that fares shall be charged in accordance with the approved fare table ;
- (xiii) that a copy of, or extract from, the fare table approved by the Regional Transport Authority and particulars of any special fares or rates of fares so approved for particular occasions shall be exhibited on every stage carriage and at specified stands and halts ;
- (xiv) that tickets bearing specified particulars shall be issued to passengers and shall show the fares actually charged and that records of tickets issued shall be kept in a specified manner :

#### Section 45 — Note 3 (contd.)

any way indicates that the Road Traffic Board is confined to the number of permits indicated in the notification inviting applications for grant of permits and the grant of permits beyond that number will be without jurisdiction. 1957 Trav-Co 254 (255) [AIR V 44 C 95] (DB).

[6] The directions and instructions which the State can give under S. 43A added to this Act by the Motor Vehicles (Madras Amendment) Act, 20 of 1948 are only administrative or executive directions and instructions. As such they do not amount to a law regulating the rights of the parties and their non-observance cannot affect the validity of a permit granted by a transport authority having regard to the considerations laid down by this section. 1959 S C 694 (701, 702) [AIR V 46 C 93]. (Permit granted to a person who under such executive order is not entitled to get it.)

[7] Neither the fact that the Transport Commissioner is at the head of the State Transport undertaking nor the fact of subordination of any member thereof under the Transport Commissioner can be a valid ground for holding that the Regional Transport Authority acted mala fide and not independently in rejecting an application under S. 47. 1959 All 197 (204) [AIR V 46 C 48].

[8] The transport authorities may be described as administrative bodies exercising quasi-judicial functions in the matter of grant of permits. The bodies or authorities are constituted by the Provincial Government. There is a regular hierarchy of administrative bodies

established to deal with the regulation of transport by means of Motor Vehicles. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had and resort cannot be had to a writ of certiorari to quash such orders. 1952 S C 192 (196) [AIR V 39] ; 1952 S C R 583. (However wide the jurisdiction under Art. 226 may be it cannot be used by the Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made.)\* 1950 Punj 473 (476) [AIR V 46 C 143]. (Choice of one co-operative society equally qualified though not supported by cogent reasons cannot be interfered with by certiorari because it cannot be said there is any error apparent on the face of the record.)\* (56) ILR (1956) 8 Assam 507 (509). (High Court cannot interfere with grant of permit unless there is some patent illegality in the use of discretion.)\* 1954 Assam 219 (221) [AIR V 41 C 62] ; ILR (1955) 7 Assam 23 (DB). (It is open to the High Court to interfere when it is found that the orders of the authorities are based on illegal factors and considerations not warranted by the law.)\* 1953 Trav-Co 102 (103, 104) [AIR V 40 C 34] ; ILR (1952) Trav-Co 923 (DB). (Ground for the order not extraneous to the Act—Irregularity in procedure alleged found to have been waived by the parties—Order cannot be interfered with under Art. 226.)

[9] Order granting permits—Permits issued—Appellate Court cannot suspend operation

- (xv) that mails shall be carried on any of the vehicles authorised by the permit subject to such conditions (including conditions as to the time in which mails are to be carried and the charges which may be levied) as may be specified ;
- (xvi) the reserve of vehicles to be kept by the holder of the permit to maintain the service and to provide for special occasions ;
- (xvii) the conditions subject to which any vehicle covered by the permit may be used as a contract carriage ;
- (xviii) that specified arrangements shall be made for the housing, maintenance and repair of vehicles ;
- (xix) that any specified bus station or shelter maintained by Government or a local authority shall be used and that any specified rent or fee shall be paid for such use ;
- (xx) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority ;
- (xxi) that the Regional Transport Authority may, after giving notice of not less than one month, —
  - (a) vary the conditions of the permit ;
  - (b) attach to the permit further conditions ;
- (xxii) that the holder of a permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may from time to time prescribe ;
- (xxiii) any other conditions which may be prescribed.]

[a] Substituted for the original section, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 42. [w. e. f. 16-2-1957].

#### Section 48 — Note 3 (contd.)

of permit. 1960 Ker 245 (247) [AIR V 47 C 119].

#### 4. Order of R. T. A. must state reasons. —

[1] The Regional Transport Authority acts quasi-judicially in deciding the applications before it for grant or renewal of stage carriage permits. 1959 All 197 (202) [AIR V 46 C 48] \* 1960 Ker 245 (246, 247) [AIR V 47 C 119] \* 1957 Andh Pra 301 (303) [AIR V 44 C 100] \* 1957 Raj 237 (239) [AIR V 44 C 90] : ILR (1955) 5 Raj 545 (DB).

[2] Though it is possible to speak of the functions of a R. T. A. under S. 47 as executive or administrative because rights of individuals are not determined in the proceedings thereunder it is also equally possible to regard them as quasi-judicial in view of the fact that any individual who seeks to carry on the business of plying buses in the exercise of his fundamental right is entitled to expect that authority to exercise its statutory functions properly and within the limits imposed by the law. 1956 S C 463 (467) [(S) AIR V 43 C 80] : 1956 S C R 256 \* 1957 Andh Pra 301 (302, 303) [AIR V 44 C 100] \* 1957 Raj 237 (239) [AIR V 44 C 90] : ILR (1955) 5 Raj 545 (DB).

[3] The order of a Tribunal like the Regional Transport Authority, which exercises judicial function under the Motor Vehicles Act, should *ex facie* show reasons in a succinct form for making that order. The reasons which have induced a judicial or quasi-judicial authority to pass a particular order, if recorded, provide a safeguard against the exercise of the powers in an arbitrary or partial manner but if such tribunals could pass or set aside orders without showing any reasons therefor,

the way would be open for corruption, manipulation and jobbery in the hands of unscrupulous persons. 1957 Raj 237 (239) [AIR V 44 C 90] : ILR (1955) 5 Raj 545 (DB).

[4] In the proceedings for issue of permits the R. T. A. should pass speaking orders. 1960 Ker 245 (247) [AIR V 47 C 119].

[5] Even if one of the reasons in granting a permit is bad, it does not necessarily follow in all cases that the order is vitiated. If several reasons are given in support of an order, some of which are bad and some of which are good, it depends upon the facts of each case whether the order can be sustained on the reasons which are good. It does not necessarily follow that because the order contains some bad reasons, the entire order must be set aside. 1956 Andh 217 (222) [AIR V 43 C 61] : ILR (1956) Andh 712 (DB).

[6] Even if one of the reasons given by the R. T. A. for granting a permit to a person is extraneous or irrelevant and there is nothing to show how far or to what extent that extraneous consideration had actually influenced the decision of the R. T. A. it must be held that the order granting the permit is invalid. 1957 Cal 638 (642) [(S) AIR V 44 C 165] : ILR (1958) 1 Cal 486.

**5. Permit cannot be granted for route or area not specified in application — Subsection (1), Proviso. —** [1] No stage carriage permit can under the law be granted in respect of any route or area not specified in the application and every such permit has to be expressed to be valid only for a specified route or routes or for a specified area. 1959 Punj 638 (641) [AIR V 46 C 203] : ILR (1959) Punj



## OBJECTS AND REASONS

See under section 46.

*Sub-section (3), cl. (xxi).* "The Committee consider that when the Regional Transport Authority wants to vary the conditions of a permit or attach further conditions to a per-

mit, it should give notice of not less than one month to the permit holder. The change has accordingly been made in the proposed section 48 (3) (xxi). Similar changes have been made in sections 51 and 56." —J. C. R.

## STATE AMENDMENTS

## MADHYA PRADESH

**MAHAKOSHAL.**—In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 48 after the words "Regional Transport Authority" wherever they occur insert the words "or the State Transport Authority" on the issue of direction under the Proviso to section 45."

—C. P. & Berar Act III of 1948, S. 7. [16-1-1948].

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 48, after the words "Regional Transport Authority" the words "or the State Transport Authority" shall be inserted.

—Bom Act VII of 1947, S. 8. [23-3-1947].

## WEST BENGAL

In its application to the State of West Bengal, in section 48, after the words "regional Transport Authority" wherever they occur insert the words "or the State Transport Authority."

—W. B. Act XIX of 1951, S. 9. [13-7-1951].

## Section 48 — Note 5 (contd.)

2121+1953 Trav-Co 74 (76) [AIR V 40 C 26] : ILR (1953) Trav-Co 234.

[2] The prohibition in proviso to S. 48 to issue permit for a route not specified in application is intended not for a part of the route applied for but for a totally different route, because in the former case all interested persons get an opportunity to object. Sub-section 48 (1) also allows the grant of a permit in modification of the application. 1959 Tripura 35 (37, 38) [AIR V 48 C 14].

[3] Rule 83 framed under the Rajasthan Motor Vehicles Act permits the Regional Transport Authority to modify the terms of the application for permits to ply transport buses in a reasonable degree and in such a case the application is to be deemed to be an application for the permit in the form granted. There is thus ample power in the Regional Transport Authority to consolidate the two routes for which applications were made and which were overlapping up to a certain point and to consider the application for the two routes as for one and the same route and to grant permit accordingly. 1955 Raj 14 (16) [AIR V 42 C 6] : ILR (1955) 5 Raj 127 (DB). (Case decided before the amendment of S. 48 in 1956.)

**6. Use of vehicle for specified route or area.**—Sub-section (2).—[1] In a case decided before the amendment of the Act in 1956 it was held that cl. (d) (11) (a) of the section as it stood then was held to impose only a reasonable restriction, which was in the interests of the public, on the right of a person to carry on the business of running bus transport and therefore by virtue of Art. 19 (6) of the Constitution did not become invalid as offending the provisions of cl. (1) (g) of that Article. Clause (d) (11) (a) of the old section is substantially sub-section (2) in the present section and hence the constitutionality of sub-section (2) also is immune from a similar challenge. 1951 All 257 (271) [AIR V 38 C 51] : ILR (1951) 1 All 269 (DB).

**7. Sub-section (3) — General.**—[1] The section which confers power on the R. T. A. to issue a permit in respect of a particular

stage carriage or a particular service of stage carriages does not offend Art. 19 of the Constitution. 1951 All 257 (271) [AIR V 38 C 51] : ILR (1951) 1 All 269 (DB). (Note — Although this case was decided before the amendment of the Act in 1956 it appears to be still good law because cl. (b) of the section as it stood then has now become sub-section (3) in the substituted S. 48.) \* 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB). (In this case which was decided before the amendment of the Act it was held that the provisions of cl. (b) were in the interests of the public and therefore valid under Art. 19 of the Constitution.)

[2] Classification of stage carriages as tourist buses and as stage carriages on the basis of the year of manufacture with a view to ensure their reliability and efficiency is reasonable and permissible under Art. 14. 1959 J & K 141 (144) [AIR V 46 C 59].

**8. Conditions of permit.**—[1] Sections 47 and 48 of the Act clearly indicate that the statutory powers to issue permits with certain conditions for stage carriages are not meant for the benefit and protection of the permit holders, but they are meant for the benefit of the general public. The dominant purpose of the Act in enacting these provisions is the benefit of the public and not of the permit holders. If in actually granting permits the Regional Transport Authority has taken into consideration such matters as the benefit to permit-holders and adjusts the grant of the permits to different claimants on different routes, then any such benefit arising out of such adjustment is not a benefit accruing in consequence of statutory provisions upon which a right of action can be founded but it is, if at all it can be described as a benefit, a benefit allowed as a measure of expediency or convenience by the authority concerned. 1958 Punj 318 (322) [AIR V 45 C 88] : ILR (1958) Punj 141 (DB).

[2] The delegation by the R. T. B. of its power under the section in regard to the attachment of conditions must be deemed to amount to a delegation also of the powers under any rule framed under the Act and

**Section 48 — Note 8 (contd.)**

dealing with the same matter. 1955 N U C (Trav-Co) 5080 [AIR V 42].

[3] The condition relating to the use of a stage carriage only on a specified route, which the R. T. A. is obliged under sub-section (2) to attach to every stage carriage permit, is as much a condition of the permit as any which it has discretion to attach to the permit under sub-section (3). The fact that it is not included in the conditions of the permit to be attached under sub-section (3) does not make any material difference. ('60) 1960-2 Andh W R 91 (93) (DB) \* 1957 Raj 312 (317) [(S) AIR V 44 C 116] : ILR (1957) 7 Raj 806 (FB). (Case decided under S. 48 before its amendment. The principle decided by it is still good law even after the amendment—See AIR 1959 Punj 41.) \* 1959 Andh Pra 476 (477) [AIR V 46 C 136]. (Case decided under the section before its amendment.) \* 1959 Raj 41 (43) [AIR V 46 C 12] : ILR (1958) 8 Raj 1112 (DB). (Amendment of the section has not in any way altered the position.)

[See however 1957 Cal 444 (445) [(S) A I R V 44 C 121]. (Case decided before amendment of section — The route is not a condition of the permit. The condition is that the holder of the permit will operate on a particular route or routes and on no other.)]

[4] Under S. 48 as it stood before the amendment and as it stands after the amendment the approved time-table itself is not a condition. Under the present sub-section (3) it is the adherence to the time-table which is the condition. Clause (iii) of the sub-section no doubt implies that time-tables are to be approved but it does not enjoin the time-table itself as a condition of the permit. 1960 Ker 359 (360) [AIR V 47 C 168] : I L R (1960) Ker 1239 \* 1959 Pat 580 (581) [A I R V 46 C 164] (DB) \* 1958 Ker 341 (343, 344) [A I R V 45 C 122] \* 1958 Ker 339 (341) [A I R V 45 C 121] \* 1952 Mad 545 (548) [A I R V 39] : I L R (1952) Mad 595 (DB). (Case decided under S. 48 before its amendment.)

[But see 1960 Ker 111 (113) [A I R V 47 C 52] : I L R (1960) Ker 172. (After the amendment of the Act in 1956 fixation of timings is a condition of the permit.) \* 1959 Andh Pra 429 (431) [A I R V 46 C 122] (DB)].

[5] A time-table and a strict adherence to it are necessary in the interest of the travelling public for whose benefit stage carriages are allowed to ply. 1958 All 575 (577) [AIR V 45 C 144] : 1958 Cri L Jour 984 (DB).

[6] It is open for the Regional Transport Authority to incorporate a condition that there should be no overloading. But the mere mention of the number of passengers' seats in the permit of a vehicle does not amount to a condition of the permit, breach of which would entail suspension of the permit. ('59) I L R (1959) Ker 295 (301) (DB).

[7] Where the permit not only specifies the maximum number of passengers that can be carried in the vehicle but also states that there should be no overloading then the prohibition against overloading is also a condition attached to the permit under the section. 1957 Trav-Co 141 (143) [A I R V 44 C 44] :

ILR (1956) Trav-Co 1293 (DB). (Case decided under the section before its amendment. The amendment seems not to affect this.)

[8] In a case decided before the amendment of the section it was decided that a trainee checking inspector on the bus did not fall within the meaning of the word "passenger" in cl. (d) (iv) (which seems to equate substantially with cl. (vi) of sub-s. (3) of the amended S. 48) read with the unamended R. 3 (h) of the Madras Motor Vehicles Rules and hence his presence in the bus over and above the specified number of passengers allowed by the permit did not amount to a breach of a condition of the permit. 1959 Mad 439 (439) [A I R V 46 C 139] : I L R (1959) Mad 481 : 1959 Cri L Jour 1188.

[9] The fare-table mentioned in the unamended S. 48 (d) (iii) is the fare-table approved by the Regional Transport Authority and forming one of the conditions of the permit. 1944 Nag 89 (90) [A I R V 31] : I L R (1944) Nag 173 : 45 Cri L Jour 469 (DB).

[10] In a case decided before the amendment of the Act in 1956 it was held that the power to fix rates for the stage carriages was conferred by S. 43 only on the Government and therefore where the Government had not made any rules fixing any amount as fair fares for stage carriages and also had not authorised the Regional Transport Authority to fix fares and to impose them as a condition to a permit it could not impose any such condition to the permit. 1955 Cal 59 (60) [(S) AIR V 42 C 10] : I L R (1956) 2 Cal 879.

[11] Before the amendment of the section it was decided in a case that cl. (d) (vi) only imposed a duty on the permit-holder to issue tickets when the passengers paid fares but that it did not prohibit him from carrying passengers free of charge. This decision would hold good even under the amended section because the provisions of cl. (xiv) of sub-s. (3) are substantially the same. 1958 All 575 (577) [AIR V 45 C 144] : 1958 Cri L Jour 984. (Held also that R. 81 (10) of the V. P. Motor Vehicles Rules also did not throw any such obligation on the permit-holder. All that the Rule did was to enjoin a passenger not to board a bus without a pass or a ticket.)

[12] An alteration of time-table does not fall within cl. (20) of sub-s. (3) the time-table not being a condition of the permit. 1960 Ker 359 (360) [AIR V 47 C 168] : I L R (1960) Ker 1239.

[But see 1959 Andh Pra 429 (439) [A I R V 46 C 122] (DB).]

[13] Under unamended S. 48 it was held that it was not open to an operator to alter the approved fare-table whenever he wished and claim that he has complied with the condition laid down in the permit under cl. (d) (iii) of that section by exhibiting any fare-table and observing it. 1944 Nag 89 (90) [AIR V 31] : I L R (1944) Nag 173 : 45 Cri L Jour 469 (DB).

[14] A variation in the standard rate of fares originally quoted and accepted by the Regional Transport Authority requires the sanction of the Regional Transport Authority.

## STATE AMENDMENTS

## SECTION 48A

## ANDHRA PRADESH

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, after section 48 *insert* the following section, namely,—

“48A. *Power of State Transport Authority to alter conditions attached to stage carriage permits.*—Any conditions attached to a stage carriage permit in pursuance of clause (d) of section 48 may, at any time, be varied or cancelled or added to by the State Transport Authority, provided that this power shall not be exercised to the prejudice of the holder of the permit without giving not less than three months' notice to him.”

— Mad. Act XX of 1948, S. 7 [21-12-1948].

*Note.*—This amendment was made prior to the substitution of section 48 by the Central Act C of 1956.

## Section 48 — Note 8 (contd.)

A variation of the rate is a variation of a condition under R. 70, C. P. and Berar Motor Vehicles Rules. ('43) 1943 Nag L Jour 411 (411) (SB).

[15] Where the Regional Transport Authority, in the exercise of the powers conferred on it by the Rules made by the Government, to prescribe uniforms for the conductors and drivers and to make it a condition of the permit, that the permit-holder should provide such uniforms, prescribes a uniform which would make it impossible for the private transport trade to function on commercial basis, its order can be challenged on the ground that it violates the fundamental rights guaranteed by Art. 19 (1) (g) of the Constitution. 1957 Punj 145 (146) [(S) AIR V 44 C 63]. (But the rules itself cannot be challenged as conferring an unregulated and arbitrary power on the Regional Transport Authority and as amounting to a delegation of legislative functions.)

*Variation of permits*

[16] The appropriate Indian authority can vary only a permit granted by an authority in India. It cannot vary a permit issued by an authority in Pondicherry. But, there is nothing to prevent the appropriate Indian authority from granting a permit to a vehicle in such a manner that together with the permit granted by the authority in Pondicherry it would be possible for an operator to run continuously from one enclave to another. 1980 Mad 231 (236) [AIR V 47 C 72].

[17] Considerations of public interest apply to varying or cancelling or adding to any condition attached to any stage carriage permit or a public carriers permit as the case may be by the State Transport Authority or by any person exercising these powers. 1959 Andh Pra 413 (419) [AIR V 46 C 117] : 1 L R (1959) Andh Pra 375 (FB).

[18] Fixing of the termini within the limits of the original permit though it may involve running of an additional distance in the same route is not an alteration of the conditions of the permit. 1958 Ker 341 (343) [AIR V 45 C 122].

[19] The alteration of a time-table does not amount to the variation of a condition of a permit and hence is not governed by cl. (xxi) of sub-s. (3) of the amended S. 48. 1960 Ker 359 (360) [AIR V 47 C 168] : 1 L R (1960) Ker 1239. (Hence even after the amendment the Secretary of the Transport Authority who had

been delegated the power to regulate the timings before the amendment of the section under the rules could continue to exercise that power to alter the existing timings even after the amendment.) \* 1956 Vindh Pra 44 (45) [AIR V 43 C 25]. (Case decided under the section as it stood before the amendment.) \* 1952 Mad 545 (548) [AIR V 39] : 1 L R (1952) Mad 595 (DB). (Case decided before the amendment but is still good law.)

[But see 1959 Andh Pra 429 (431) [AIR V 46 C 122] (DB).]

[20] The route or area specified in the permit is a condition of the permit and hence the Regional Transport Authority has power after the amendment of S. 48 in 1956 to vary the existing route under sub-s. (3) (xxi) of the section. 1959 Andh Pra 476 (477) [AIR V 46 C 136]. (Section 48A (Madras) which conferred the power on S. T. A. cannot prevail against sub-s. (3) (xxi) which is a central enactment.)

[21] Assuming that the Secretary of the Regional Transport Authority has the power to fix the timings in aid of the permit granted by the Regional Transport Authority, he cannot so fix them as to authorise variations of the route. ('58) 1958 Ker L J 992 (993).

9. *Power of review.* — [1] There is no provision for a review by the Regional Transport Authority of its own order either in the Act or in the rules framed under it. Since it is well-settled that a power of review is not inherent in any authority it has also no inherent power to review except to correct its own mistake. 1957 Pat 117 (119) [AIR V 44 C 37] : 35 Pat 802 (DB) \* 1960 Pat 6 (7) [AIR V 47 C 2] \* 1959 Cal 543 (547) [AIR V 46 C 148]. (Regional Transport Authority fixing term and extent of permit in accordance with sub-s. (3) added to S. 58 by State amendment overlooking the fact that the provision had become nugatory as a result of the amendment of the main Act by Act 100 of 1956 — Mistake can be rectified.)

## Section 48A (Andhra Pradesh) — Note 1

[1] The State Government can, in the exercise of its powers under S. 44A (Andhra Pradesh) authorise the Regional Transport Officer to exercise the powers and discharge the functions of the State Transport Authority under Ss. 48A (Andhra Pradesh) and 56A (Andhra Pradesh) of the Act. 1959 Andh Pra 413 (417) [AIR V 46 C 117] : ILR (1959)

**BIHAR**

In its application to the State of Bihar, the newly inserted section 48A is the same as the one given under Andhra Pradesh. : —Bihar Act XXVII of 1950, S. 7 [21-7-1950].

**MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra, after section 48, the following new section shall be inserted namely :—

“48A. *Issue of stage carriage permit to Government or local authorities.*—Notwithstanding anything contained in sections 47 and 48, a Regional Transport Authority or the State Transport Authority shall issue the stage carriage permit applied for by or on behalf of the State Government or a local authority with the concurrence of the State Government.”

—Bom. Act VII of 1947, S. 9 [23-3-1947].

**PUNJAB**

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, insert the following new section, namely,—

“48A. *Power of State Transport Authority to alter conditions attached to stage carriage permits.*—Any conditions attached to a stage carriage permit in pursuance of clause (d) of section 48 may, at any time, be varied, cancelled or added to by the State Transport Authority : provided that this power shall not be exercised to the prejudice of the holder of the permit without giving not less than three months' notice to him.”

—E. P. Act XXVIII of 1948, S. 6 [12-7-1948].

*Note.*—This amendment was made prior to the substitution of section 48 by the Central Act C of 1956.

**WEST BENGAL**

In its application to the State of West Bengal the newly inserted section 48A is the same as that given under Maharashtra. —W. B. Act XIX of 1951, S. 10 [13-7-1951].

**49. Application for contract carriage permit.**

An application for a permit to use “[one or more motor vehicles as a contract carriage or carriages] (in this Chapter referred to as a contract carriage permit) shall contain the following particulars, namely :—

- (a) the type and seating capacity of the vehicle [or each of the vehicles];
- (b) the area for which the permit is required;
- (c) in the case of a motor vehicle other than a motor cab, the manner in which it is claimed that the public convenience will be served by the vehicle; and
- (d) any other particulars which may be prescribed.

[a] Substituted for “a motor vehicle as a contract carriage” by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 43 [w. e. f. 18-2-1957]. [b] Inserted, *ibid.*

**OBJECTS AND REASONS**

*Amendments made in 1956 in sections 49 to 56.*—Amendments *mutatis mutandis* in the case of contract carriage and public carrier permits are made similar to those made in respect of stage carriage permits (Ss. 46, 47 and 48). “One result will be that it will now be pos-

sible to issue one permit for a fleet of public carrier vehicles instead of individual permits for each vehicle. Necessary amendments to sections 52 and 53 are also being made in respect of private carriers permit.”

—S. O. R.

**Section 48A (Andh Pra) — Note 1 (contd.)**  
Andh Pra 375 (FB) \* 1959 Andh-Pra 476 (477) [AIR V 46 C 136].

[2] Subsequent to the coming into force of the Motor Vehicles (Amendment) Act, 100 of 1956 the Regional Transport Authority itself has power under S. 48 (3) (xxi) of varying the conditions of a permit. Hence a variation of the conditions made by it subsequent to the amendment of the Act cannot be condemned as beyond its powers even if the assumption, that under S. 48A as introduced by the Madras Legislature it cannot exercise such a power, is correct. If such an assumption is correct then S. 48A happens to be inconsistent with S. 48 (3) (xxi), a provision which has been inserted by the Central Legislature and as such should be declared to be void in view

of Art. 254 of the Constitution. 1959 Andh-Pra 476 (477) [AIR V 46 C 136].

[3] The same conditions as would apply to the grant or refusal of a stage carriage permit must also apply in the case of its variation. Sub-section (1) of S. 47 lays down the conditions which should be taken into consideration in deciding whether to grant or refuse a stage carriage. Hence in exercising the power to vary conferred by S. 48A (Andhra Pradesh) the authority cannot act ignoring those conditions. 1957 Andh-Pra 978 (981) [AIR V 44 C 313] (DB). (Government in revision under S. 64A varying the route of the permits must take into consideration the question of public interest.)

## 50. Procedure of Regional Transport Authority in considering application for contract carriage permit.

A Regional Transport Authority shall, <sup>a</sup>[in considering an application for] a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.

[a] Substituted for "in deciding whether to grant or refuse" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 44 [w. e. f. 16-2-1957].

### STATE AMENDMENTS

#### MADHYA PRADESH

MAHAKOSHAL — In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 50 after the words "Regional Transport Authority" insert the words "or the State Transport Authority on the issue of a direction under the Proviso to section 45".

— C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

#### MAHARASHTRA

VIDARBHA—The amendment made in this section by the C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

## \*[51. Grant of contract carriage permits.

(1) Subject to the provisions of section 50, a Regional Transport Authority may, on an application made to it under section 49, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit :

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :

- (i) that the vehicle or vehicles shall be used only in a specified area or on a specified route or routes ;
- (ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area ;
- (iii) the conditions subject to which goods may be carried in any contract carriage in addition to or to the exclusion of passengers ;
- (iv) that, in the case of motor cabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle ;

### Section 50 — Note 1

[1] Section 50, inasmuch as it makes "representations" a fact to be taken into consideration in the granting of contract carriage permits, impliedly makes it necessary to give some sort of notice regarding an application for such permits. ('57) 61 Cal W N 590 (595, 596).

[2] As no rules have been framed under the Act prescribing the method for giving notices, any rational method such as publication on the notice board of the Regional Transport Authority or advertisement in the papers can be followed for giving the notice required under S. 50 in regard to an application for a contract carriage permit. ('57) 61 Cal W N 590 (595, 596).

[3] The State Government being neither a

police authority nor a local authority cannot make any representation under the section in those capacities. It cannot make a representation even as a person already holding a permit where it is only a new applicant for the grant of a permit. 1951 Him Pra 36 (46, 47) [AIR V 38 C 11].

### Section 51 — Note 1

[1] Section 51 gives to the Regional Transport Authority the power to restrict the number of contract carriages and imposes conditions on contract carriage permit. It can limit the number of contract carriages generally or contract carriages of any specified type. ('57) 61 Cal W N 590 (596).

- (v) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceeding specified maxima shall be charged ;
  - (vi) that, in the case of motor cabs, a specified weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate ;
  - (vii) that, in the case of motor cabs, a taxi-meter shall be fitted and maintained in proper working order, if prescribed ;
  - (viii) that the Authority may, after giving notice of not less than one month,—
    - (a) vary the conditions of the permit ;
    - (b) attach to the permit further conditions ;
  - (ix) that the conditions of permit shall not be departed from save with the approval of the Authority ;
  - (x) any other conditions which may be prescribed.]
- [a] *Substituted* for the original section, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 45 [w. e. f. 16-2-1957].

## STATE AMENDMENTS

## MADHYA PRADESH

**MAHAKOSHAL**—In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 51 after the words "Regional Transport Authority" wherever they occur *insert* the words "or the State Transport Authority on the issue of a direction under the Proviso to section 45".

—C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

## MAHARASHTRA

**VIDARBHA**—The amendment made in this section by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

## SECTION 51A

## STATE AMENDMENTS

## ANDHRA PRADESH

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, after section 51 *insert* the following new section, namely,—

**"51A. Power of State Transport Authority to alter conditions attached to contract carriage permits.**—Any conditions attached to a contract carriage permit in pursuance of section 51 may, at any time, be varied, cancelled or added to by the State Transport Authority, provided that this power shall not be exercised to the prejudice of the holder of the permit without giving not less than three months' notice to him."

—Mad. Act XX of 1948, S. 8 [21-12-1948].

## BIHAR

In its application to the State of Bihar, the newly *inserted* section 51A is the same as that given under Andhra Pradesh.

—Bihar Act XXVII of 1950, S. 8 [21-7-1950].

## MADRAS

In its application to the pre-reorganised State of Madras, excluding the transferred territories, the newly *inserted* section 51A is the same as that given under Andhra Pradesh.

—Mad. Act XX of 1948, S. 8 [21-12-1948].

## PUNJAB

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, the newly *inserted* section 51A is the same as that given under Andhra Pradesh.

—E. P. Act XXVIII of 1948, S. 7 [12-7-1948].

**52. Application; for private carrier's permit.**

An application for a permit to use <sup>a</sup>[one or more transport vehicles] for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a private carrier's permit) shall contain the following particulars, namely :—

- (a) the type and carrying capacity of the vehicle <sup>b</sup>[or each of the vehicles];
- (b) the nature of the goods which the applicant expects normally to carry in connection with his trade or business;

## Section 51A (Andhra Pradesh and Madras) — Note 1

[1] Under S. 51A read with S. 44A the State Government can authorise the Regional Transport Officer to exercise the powers and discharge the functions of a State Transport Authority. 1959 Andh Pra 413 (417) [AIR V 46 C 117]: I L R (1959) Andh Pra 375 (FB).

- (c) the area for which the permit is required; and  
 (d) any other particular which may be prescribed.

[a] Substituted for "a transport vehicle", by the Motor Vehicles (Amendment) Act, 1958 (C of 1958), S. 46 [w. e. f. 18-2-1957]. [b] Inserted, *ibid.*

### 53. Procedure of Regional Transport Authority in considering application for a private carrier's permit.

(1) A Regional Transport Authority shall, <sup>a</sup>[in considering an application for] a private carrier's permit, have regard to the conditions of the roads to be used by the vehicle or vehicles in respect of which the application is made, and shall satisfy itself that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant.

<sup>b</sup>[(1A) Subject to the provisions of sub section (1), the Regional Transport Authority may, on an application made to it under section 52, grant a private carrier's permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit :

Provided that no such permit for any area in any other region or regions within the same <sup>a</sup>[State] shall be granted except with the approval of the <sup>a</sup>[State] Transport Authority.]

(2) The Regional Transport Authority may in granting a private carrier's permit impose conditions to be specified in the permit relating to the description of goods which may be carried, or the area in which the permit shall be valid, or the maximum laden weight and axle weights of any vehicle used <sup>c</sup>[or any other matter which may be prescribed].

(3) If the applicant is the holder of a private carrier's permit which has been suspended or has been the holder of a private carrier's permit which has been revoked, the Regional Transport Authority may <sup>d</sup>[\* \* \*] notwithstanding anything contained in sub-section (1) refuse the application.

[a] Substituted for "in deciding whether to grant or refuse", by the Motor Vehicles (Amendment) Act, 1958 (C of 1958), S. 47 [w. e. f. 18-2-1957]. [b] Inserted, *ibid.*  
 [c] Added, *ibid.* [d] The words "at its discretion" were omitted, *ibid.*

### STATE AMENDMENTS

#### MADHYA PRADESH

MAHAKOSHAL — In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 53 after the words "Regional Transport Authority" wherever they occur insert the words "or State Transport Authority on the issue of a direction under the Proviso to section 45".  
 —C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

#### Section 53 — Note 1

[1] The Regional Transport Authority can refuse an application for private carriers permits only on the grounds mentioned in S. 53. Hence the fitness of applicant being a consideration extraneous to them cannot constitute a valid ground for the refusal of the permit. 1959 Assam 106 (106) [AIR V 48 C 22].

[2] The fact that the applicant for a private carriers permit had been prosecuted for plying his vehicle after the expiry of his permit, without a fresh permit is no ground for rejecting the application when the prosecution was launched after the application had been made. 1959 Assam 106 (106) [AIR V 46 C 22].

[3] The maintenance of a log-book and the submission of its copy to the Regional Transport Authority cannot be made a condition of the permit under sub-section (2) of this section. 1959 All 205 (206) [AIR V 46 C 49] (DB). (But a permit-holder can be made

to comply with this requirement by mentioning the log-book in the permit as a record which is to be maintained and the returns of which should be made to the Regional Transport Authority — AIR 1959 All 373, *Reversed.*)

[4] Sub-section (2) of S. 53 cannot be struck down as a provision imposing an unreasonable restriction on the freedom of trade of a permit holder. It may be that the Regional Transport Authority may in the exercise of its powers under the sub-section erroneously prohibit the permit-holder from carrying even an article which may be necessary for his business or trade but the possibility of the authority making such an error cannot render sub-section (2) itself invalid. An error if committed may only give an occasion for the permit-holder to challenge the order of the Regional Transport Authority. 1959 All 205 (206) [AIR V 46 C 49] (DB). (AIR 1959 All 373, *Affirmed.*)



**MAHARASHTRA**

**VIDARBHA** — The amendment made in this section by C. P. & Berar Act III of 1948 applies to the Vidarbha area of the State of Maharashtra.

**\*[54. Application for public carrier's permit.**

An application for a permit to use one or more motor vehicles for the carriage of goods for hire or reward (in this Chapter referred to as a public carrier's permit), shall, as far as may be, contain the following particulars, namely :—

- (a) the area or the route or routes to which the application relates;
- (b) the number of vehicles it is proposed to operate in relation to each area or route and the type and <sup>b</sup>[\*] capacity of each such vehicle;
- (c) the nature of the goods it is proposed to carry;
- (d) the manner in which it is claimed that a public need will be served by the vehicle;
- (e) the arrangements intended to be made for the housing of the vehicles and for the storage and safe custody of the goods to be carried;
- (f) particulars as to whether the applicant is a co-operative society registered or deemed to have been registered under any enactment in force for the time being, or is an individual owner;
- (g) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application and of the rates charged by the applicant;
- (h) particulars of any agreement, or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region;
- (i) any other particulars which may be prescribed.]

[a] Substituted for the original section, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 48 [w. e. f. 16-2-1957]. [b] The word 'seating' was omitted by the Repealing and Amending Act, 1960 (LVIII of 1960), S. 3 and Sch. II [26-12-1960].

**STATE AMENDMENTS****MADHYA PRADESH**

**MAHAKOSHAL**—In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 54 (d)<sup>a</sup> after the words "Regional Transport Authority" insert the words "or the State Transport Authority on the issue of a direction under the Proviso to section 45".

—C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

[a] Now see section 54 (g).

**MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra, in section 54 (d)<sup>a</sup> after the words "Regional Transport Authority" insert the words "the State Transport Authority".

—Bom. Act VII of 1947, S. 8 [23-3-1947].

**VIDARBHA** — The amendment made in this section by C. P. & Berar Act III of 1948 applies to the Vidarbha area of the State of Maharashtra.

[a] Now see section 54 (g).

**WEST BENGAL**

In its application to the State of West Bengal, the amendment made in section 54 (d)<sup>a</sup> is the same as that given under Maharashtra.

—W. B. Act XIX of 1951, S. 9 [13-7-1951].

[a] Now see section 54 (g).

**\*[55. Procedure in considering application for public carrier's permit.**

(1) A Regional Transport Authority shall, in considering an application for a public carrier's permit, have regard to the following matters, namely :—

- (a) the interests of the public generally ;

**Section 55 — Note 1**

[1] Under Cl. (a) the Regional Transport Authority is entitled to take into consideration only the question of the interest of the

public which are going to use the transport system and not every interest of the general public which is totally unrelated to it. Hence the Regional Transport Authority cannot act



- (b) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service and the saving of time likely to be effected thereby ;
- (c) the adequacy of other goods services operating or likely to operate in the near future, whether by road or other means, between the places to be served ;
- (d) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;
- (e) the benefit to any particular locality or localities likely to be afforded by the service ;
- (f) the condition of the roads included in the proposed area or route ;
- (g) the nature of the goods to be carried with special reference to any of a fragile or perishable nature ;
- (h) the volume of traffic and the existence of marketing centres in the proposed area or along or near the proposed route ;

and shall also take into consideration any representations made by persons already providing goods transport facilities by any means, whether by road or otherwise, in the proposed area or along or near the proposed route, or by any local authority or police authority within whose jurisdiction any part of the proposed area or route lies :

Provided that other conditions being equal, an application for a public carrier's permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over applications from individual owners.

(2) A Regional Transport Authority may, having regard to the matters mentioned in sub-section (1), limit the number of transport vehicles generally or of any specified type for which public carrier's permits may be granted in the region or in any specified area or on any specified route within the region.]

[a] *Substituted* for the original section, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 49 [w. e. f. 16-2-1957].

#### STATE AMENDMENTS

##### MADHYA PRADESH

MAHAKOSHAL.—In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 55 after the words "Regional Transport Authority" wherever they occur *insert* the words "or the State Transport Authority on the issue of a direction under the proviso to section 45".

—C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

##### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 55 after the words "Regional Transport Authority" *insert* the words "or the State Transport Authority".

—Bom. Act VII of 1947, S. 8 [23-3-1947].

VIDARBHA.—The amendment made by C. P. & Berar Act III of 1948 in section 55 applies to the Vidarbha area of the State of Maharashtra.

##### ORISSA

In its application to the State of Orissa in section 55 after clause (f) *insert* the following clauses, namely,—

- "(g) other conditions being equal, in the interest of proper co-ordination of transport facilities, the expediency of giving due consideration to a State Transport Service :
- (ii) the necessity for preventing unhealthy competition in any route or routes or area on which the State Transport Service may ply:" —Orissa Act I of 1949, S. 4.<sup>a</sup>

[a] This amendment was made prior to the *substitution* of section 55 by the Central Act C of 1956.

For the date of commencement of this amendment in different districts of the State of Orissa and the consequences that follow on such commencement, *see* foot-note 'a' given under clause (29B) of section 2 : State Amendment — Orissa.

##### Section 55 — Note 1 (contd.)

on the consideration that some of the applicants are refugees, or political sufferers or members of the scheduled tribes or backward hillmen and as such deserve help. That consideration, however, irresistible it may be from

a political or social point of view is extraneous to the kind of the interest which is contemplated by Cl. (a). 1956 Cal 490 (495) [AIR V 43 C 142].

**WEST BENGAL**

In its application to the State of West Bengal, in section 55 after the words "Regional Transport Authority" wherever they occur *insert* the words "or the State Transport Authority".  
—W. B. Act XIX of 1951, S. 9 [13-7-1951].

**\*[56. Grant of public carrier's permits.**

(1) Subject to the provisions of section 55, a Regional Transport Authority may, on an application made to it under section 54, grant a public carrier's permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit :

Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a public carrier's permit, may grant the permit for one or more goods vehicles of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :—

- (i) that the vehicle or vehicles shall be used only in a specified area, or on a specified route or routes;
- (ii) that the laden weight of any vehicle used shall not exceed a specified maximum;
- (iii) that goods of a specified nature shall not be carried;
- (iv) that goods shall be carried at specified rates;
- (v) that specified arrangement shall be made for the housing, maintenance and repair of vehicles and the storage and safe custody of the goods carried;
- (vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics, and other information as the State Government may, from time to time, prescribe;
- (vii) that the Regional Transport Authority may after giving notice of not less than one month,—
  - (a) vary the conditions of the permit;
  - (b) attach to the permit further conditions;
- (viii) that the conditions of the permit shall not be departed from save with the approval of the Regional Transport Authority;
- (ix) any other conditions which may be prescribed.

(3) Where there is any free zone along or contiguous to the area or route for which a public carrier's permit is granted, the Regional Transport Authority shall include in such permit, wherever possible, an authorisation to carry any goods other than those prohibited by any law for the time being in force, anywhere in that free zone.

(4) For the purposes of this section, "free zone" means such municipal limits of a town or such other area as the State Transport Authority may, subject to any rules that may be made under section 68 and having regard to the volume

**Section 56 — Note 1**

[1] Under Cl. (b) of S. 56 as it stood before its amendment considerations of public interest applied to varying or cancelling or adding to any condition attached to a public carrier's permit. 1959 Andh-Pra 413 (419) [AIR V 46 C 117] : ILR (1959) Andh-Pra 375 (FB).

[2] The Registering Authority has no power to add to a permit any condition other than those which have been prescribed by the rules made by the Government in exercise of its powers under Section 68. Hence the breach of a non-prescribed condition added to the permit by the Registering Authority itself does not make the person in breach liable to punish-

ment. 1957 J & K 9 (10) [AIR V 44 C 7] : 1957 Cri L Jour 446.

[3] By virtue of the provisions of S. 44A added to this Act, in its application to the Madras State, by the Motor Vehicles (Madras Amendment) Act, 20 of 1948, the government of that State is entitled to authorise the Regional Transport Officer to exercise the powers conferred on the State Transport Authority by S. 56A, introduced by the same amending Act, to vary, cancel or add to the conditions in a permit. 1959 Andh-Pra 413 (417) [AIR V 46 C 117] : I L R (1959) Andh-Pra 375 (FB).

of traffic in the area and other circumstances, declare to be a free zone within which goods may be carried anywhere by any motor vehicle covered by a public carrier's permit.]

[a] Substituted for the original section, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 50 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

"The addition of a new sub-section (3) is intended to facilitate the movement of transport vehicles within municipal limits of a town without let or hindrance." —S. O. R.

### STATE AMENDMENTS

#### MADHYA PRADESH

**MAHAKOSHAL** — In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 56 after the words "Regional Transport Authority" wherever they occur insert the words "or the State Transport Authority on the issue of a direction under the proviso to section 45". — C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

#### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 56 after the words "Regional Transport Authority" insert the words "or the State Transport Authority".

— Bom. Act VII of 1947, S. 8 [23-3-1947].

**VIDARBHA** — The amendment made in this section by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

#### WEST BENGAL

In its application to the State of West Bengal, in section 56 after the words "Regional Transport Authority" wherever they occur insert the words "or the State Transport Authority". — W. B. Act XIX of 1951, S. 9 [13-7-1951].

### STATE AMENDMENTS

#### SECTION 56A

##### ANDHRA PRADESH

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, after section 56 insert the following new section, namely,—

"56A. *Power of State Transport Authority to alter conditions attached to public carrier's permits.* — Any conditions attached to a public carrier's permit in pursuance of clause (b) of section 56 may, at any time, be varied, cancelled or added to by the State Transport Authority, provided that this power shall not be exercised to the prejudice of the holder of the permit without giving not less than three months' notice to him."

— Madras Act XX of 1948, S. 9 [21-12-1948].

**NOTE.** — This amendment was made prior to the substitution of section 56 by the Central Act C of 1956. Now see sub-section (2) of section 56 of the principal Act.

##### BIHAR

In its application to the State of Bihar, the newly inserted section 56A is substantially the same as the one given under Andhra Pradesh. — Bihar Act XXVII of 1950, S. 9 [21-7-1950].

##### MADRAS

In its application to the pre-reorganised State of Madras, excluding the transferred territories, the newly inserted section 56A is the same as the one given under Andhra Pradesh.

— Madras Act XX of 1948, S. 9 [21-12-1948].

##### PUNJAB

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, the newly inserted section 56A is the same as the one given under Andhra Pradesh.

— E. P. Act XXVIII of 1948, S. 8. [12-7-1948].

### 57. Procedure in applying for and granting permits.

(1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired

#### SECTION 57 — SYNOPSIS

1. Scope.
2. Applications for permits under sub-s. (2).
3. Publication of applications and notice — Sub-s. (3).
4. Consideration of representations — Sub-s. (4).
5. Hearing of objectors — Sub-s. (5).

6. Representations in the case of contract carriage permits — Sub-s. (6).

7. Reasons for refusal — Sub-s. (7).

8. Variation of conditions — Sub-s. (8).

1. Scope. — [1] The right of a person to make an application for the grant of a permit is neither transferable nor heritable. 1957 All 471 (472) [AIR V 44 C 148] (DB). (Hence on

that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations, received will be considered:

\*[Provided that, if the grant of any permit in accordance with the application or with modifications would have the effect of increasing the number of vehicles operating in the region, or in any area or on any route within the region, under the class of permits to which the application relates, beyond the limit fixed in that behalf under sub-section (3) of section 47 or sub-section (2) of section 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in this sub-section.]

(4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

#### Section 57 — Note 1 (contd.)

the death of an applicant during the pendency of his appeal against the refusal to grant a permit his heir cannot claim to be brought on record and allowed to continue the appeal as the appellant.)

[2] The procedure laid down in S. 57 must be followed by the transport authority when dealing with applications for permits. If that authority either grants a permit or refuses a permit without following the procedure laid down in S. 57, it would be a case of material irregularity and the order for granting or refusing permit will be liable to be set aside by appellate authority on an appeal. 1945 Cal 260 (263) [AIR V 32] : I L R (1944) 1 Cal 631 (DB)\*1960 Manipur 36 (40) [AIR V 47 C 10]\*1959 Tripura 35 (37) [A I R V 46 C 14]. (Permit granted without following procedure laid down in S. 57 — Though the grantee himself alleges it to be a temporary permit and the R. T. A. has informed him subsequently that it is a temporary permit neither the resolution granting the permit nor the application on which it is granted warranting that position — Held that the permit was one beyond the jurisdiction of the R. T. A.)\*1952 Nag 353 (355) [AIR V 39] : I L R (1953) Nag 110 (DB). (Granting of permit for a limited period in a case not covered by S. 62 and without the enquiry contemplated by S. 57 is irregular.)

[3] The Transport authorities can be directed by a writ of mandamus to consider and dispose of the applications for permits according to

law where they take no action on them even in spite of the requests of the applicants. 1953 Raj 1 (3, 4) [AIR V 40 C 1] : I L R (1952) 2 Raj 265 (DB).

[See also 1952 All 437 (439) [A I R V 39] : I L R (1952) 1 All 159. (Applications for renewal of permits should be disposed of according to the procedure in S. 58 (2). It is wrong to tie them up with the applications for new permits received under sub-s. (2) of S. 57 and delay their disposal as that amounts to dilatory tactics. Applicants for renewal have a case under such circumstances for the issue of a writ of mandamus directing the R. T. A. to dispose the applications according to law.)]

[4] Where in view of the contemplated nationalisation of a route the R. T. A. has treated an application for permanent permit as one for temporary permit and has disposed of it also it cannot be said that the application would still continue to be available for consideration and disposal, when, as a result of the subsequent decision of the Government not to nationalise the route, vacancies for permanent permits on the route are thrown open. 1959 Pat 393 (394) [A I R V 46 C 109] (DB).

2. Applications for permits under sub-s. (2). — [1] Where a scheme has not been prepared and published under S. 68C the State Transport Undertaking is competent to apply for a permit along with other applicants under S. 57 (2). 1960 Pat 506 (507) [AIR V 47 C 167] (DB).

(6) When any representation has been made by the persons or authorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any persons likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

[(8) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of services above the specified maximum, or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit :

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles.

#### Section 57 — Note 2 (contd.)

[2] An omission to make an application for the grant of a permit on the prescribed form amounts only to a breach of the rules which does not render the permit granted invalid. 1959 Tripura 35 (38) [AIR V 46 C 14].

[3] The omission to mention in an application made under the first part of sub-s. (2) the date from which the permit is desired does not invalidate the application. In view of the provisions of the sub-section a presumption arises in such cases that the applicant is desirous of obtaining a permit which would take effect on the expiry of six weeks from the date of his application. Thus there is a clear specification of the date by implication. 1959 All 253 (255) [AIR V 46 C 70] (DB).

[4] Applications for permits made within the proper time allowed by the earlier part of sub-s. (2) must be disposed of by the R. T. A. without any undue delay and as promptly as possible. There can be no valid justification for delaying the disposal of these applications on the ground that the route has not yet been advertised under the latter part of the sub-section and that they will be disposed of only if and after it is so advertised. 1956 Assam 6 (7) [AIR V 43 C 4] (DB) + 1952 All 437 (444) [AIR V 39] : ILR (1952) 1 All 159 (DB). (The R. T. A. in such cases can be directed by a writ of mandamus to consider the applications and dispose them of in accordance with the provisions of the Act as are applicable and are valid.)

[5] Sub-section (2) applies even to applications for issue of permits made by a State Transport Authority under S. 68F (1). Thus where the R. T. A. has not appointed any date for making an application the State Transport Authority must apply before six weeks from the date on which the permit is desired and unless it has done so no permit can be validly granted to it, rejecting the applications for renewals of the existing

permits. 1960 S C 350 (352) [AIR V 47 C 58]; 1960-2 S C R 130.

[6] The period specified by sub-s. (2) applies also to applications for renewals of permits and therefore any rule framed under the Act which increases that period in the case of applications for renewals must fail as being ultra vires. 1957 Ker 187 (188) [(S) AIR V 44 C 94].

[7] The Regional Transport Authority can call for applications in anticipation of a road being made a public road and open for buses to ply although so long as the road has not been made public it has no power to grant a permit. 1959 Mys 72 (75) [AIR V 46 C 28] : ILR (1958) Mys 472 (DB).

[8] The second part of sub-s. (2) has reference only to applications for new permits and therefore the R. T. A. is not required to observe the procedure laid down by the sub-section in dealing with the applications for the renewal of permits. The procedure to be followed in their cases is the one prescribed by S. 58 (2). 1952 All 437 (440) [AIR V 39] : ILR (1952) 1 All 159 (DB).

[9] A permit granted to the State Transport Authority on an application not made in compliance with sub-s. (2) will not be set aside at the instance of a person, who, being not a displaced operator, is not at all prejudiced by the grant. 1960 Pat 575 (582) [AIR V 47 C 198] (DB).

#### 3. Publication of applications and notice

—Sub-s. (3) — [1] The provisions of S. 57 (3) are not merely directory but are mandatory, and the publication of the application or its substance as required by sub-section (3) of S. 57 is ordinarily, a condition precedent to the exercise of its jurisdiction by the Regional Transport Authority under sub-section (5) of that section. 1959 Mys 62 (65) [AIR V 46 C 26] : ILR (1958) Mys 500 (DB) + 1953 Raj 1 (2) [AIR V 40 C 1] : ILR (1952) 2 Raj 265 (DB).

(9) A Regional Transport Authority may, before such date as may be specified by it in this behalf, replace any stage carriage permit, contract carriage permit or public carrier's permit granted by it before the said date by a fresh permit conforming to the provisions of section 48 or section 51 or section 56, as the case may be, and the fresh permit shall be valid for the same route or routes or the same area for which the replaced permit was valid :

Provided that no condition other than a condition which was already attached to the replaced permit or which could have been attached thereto under the law in force when that permit was granted shall be attached to the fresh permit except with the consent in writing of the holder of the permit.

(10) Notwithstanding anything contained in section 58, a permit issued under the provisions of sub-section (9) shall be effective without renewal for the remainder of the period during which the replaced permit would have been so effective.]

[a] Added by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 51 [w.e.f. 16.2.1957]. [b] Inserted, *ibid*.

### OBJECTS AND REASONS

*Proviso to sub-section (3)* — This Proviso "is intended to enable the Regional Transport Authorities to reject an application for permit summarily in cases where the full number of vehicles required to serve a particular route or area, etc., has already been reached".

*Sub-sections (8) to (10)* — These sub-sections are "necessary, now that permits are to be drawn in a different form and power is given

to vary the condition, so as to prevent such variation without the completion of the formalities necessary to safeguard the interest of other operators. Provision to enable a change from the old to the new form of permit during the currency of existing permits is necessary. Restrictions to safeguard the interests of the permit-holders have been included."

— S. O. R.

### Section 57 — Note 3 (contd.)

[2] Since no time has been prescribed by sub-s. (3) for the publication of applications it should be done within a reasonable time. 1953 Raj 1 (2) [AIR V 40 C 1] : ILR (1952) 2 Raj 265 (DB). (A delay of six months cannot be said to be reasonable.) \*1959 Pat 393 (394) [AIR V 46 C 109] (DB). (Lapse of five years is not a reasonable time.)

[3] On the language of sub-s. (3), as it reads, it is no doubt possible to say that the R. T. A. is not bound to allow a period of thirty days after the publication of the application and notice for filing representations but can fix any prior date even as the last date for that purpose. Even so a date so fixed by it cannot prevail where the rules framed under the Act have prescribed clearly a period of thirty days for making representations and therefore the refusal of the R. T. A. in such a case to hear the parties on the ground that their representations were not received by it before the date fixed by it in the notification would be illegal. 1960 Ker 85 (86) [AIR V 47 C 38].

[4] An omission to mention in the notification under sub-s. (3), which is otherwise in accordance with its provisions, the date, time and place of hearing amounts merely to an irregularity which will not lead to the failure of the proceedings unless a failure of justice has been occasioned by it. No such failure can be said to have been occasioned where the R. T. A. later on, has intimated those particulars individually to the applicants as well as the persons who had submitted representations. 1960 Mys 33 (39) [AIR V 47 C 7] (DB).

[5] The intention of the legislature is that the date, time and place should be notified and not that it should be done in the same

notification issued under sub-s. (3). Even if the authority notifies these particulars subsequently it can be held that there is substantial compliance with the provisions of the section. 1960 Manipur 36 (39) [AIR V 47 C 10].

[6] The R.T.A. has no jurisdiction to dispose of an application within thirty days of its publication in the Gazette and grant a permit. A permit where it had been so granted is illegal. 1957 All 254 (255) [(S) AIR V 44 C 73] (DB). (Misc. Writ. No. 83 of 1955, D/- 12-7-55 (All), *Overruled*.)

[7] The rejection of an application for permit before the expiry of the thirty days from the date of publication of the application does not offend the provisions of sub-s. (3). The provisions which are mandatory so far as the interests of the objectors are concerned are in no way contravened by such an order because in passing such an order it necessarily means that the R. T. A., has considered all the good points that can be urged in favour of the objectors. 1960 Raj 63 (64, 65) [AIR V 47 C 15] : ILR (1960) 10 Raj 279 (FB).

[8] The procedure prescribed by sub-s. (3) has to be followed in dealing with an application for the renewal of a permit also. Thus, it is obligatory on the part of the authority to cause those applications to be published and invite representations in the same manner as in the case of applications for permits. 1959 Mys 17 (19) [AIR V 46 C 5] : ILR (1958) Mys 421 (DB).

[9] The procedure prescribed by S. 57 need not be followed with regard to the grant of temporary permits. 1959 Pat 111 (112) [AIR V 46 C 26] (DB). (Hence failure of a party to prefer objection to the grant of such a per-

## STATE AMENDMENTS

## MADHYA PRADESH

**MAHAKOSHAL**—In its application to the Mahakoshal region of the State of Madhya Pradesh in sub-sections (2), (3), (4), (5) and (7) of section 57 after the words "Regional Transport Authority" wherever they occur *insert* the words "or the State Transport Authority on the issue of a direction under the Proviso to section 45".

—C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in sub-sections (2), (3), (4), (5) and (7) of section 7 after the words "Regional Transport Authority" *insert* the words "or the State Transport Authority".

—Bom. Act VII of 1947, S. 8 [23-3-1947].

**VIDARBHA**—The amendment made in this section by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

## ORISSA

In its application to the State of Orissa, in section 57 —

- (a) in sub-section (2) after the words "shall be made" *insert* the words in the case of State Transport Service not less than two weeks and in other cases";
- (b) in sub-section (3) after the words "and the date" *insert* the words "not being less than ten days in the case of an application by the State Transport Service and in other cases".

—Orissa Act I of 1949, S. 5.<sup>a</sup>

[a] For the date of commencement of this amendment in different districts of the State of Orissa and the consequences that follow on such commencement, *see* foot-note 'a' given under clause (29B) of section 2 : State Amendment — Orissa.

## WEST BENGAL

In its application to the State of West Bengal, in sub-sections (2), (3), (4), (5) and (7) of section 57 after the words "Regional Transport Authority" wherever they occur *insert* the words "or the State Transport Authority".

—W. B. Act XIX of 1951, S. 9 [13-7-1951].

## Section 57 — Note 3 (contd.)

mit would not make his appeal under S. 64 (f) incompetent.) \*1959 Raj 119 (120) [AIR V 48 C 45] : ILR (1959) 9 Raj 144 (DB). (A person who has orally objected to the grant of a temporary permit can also maintain an appeal.)

**4. Consideration of representations — Sub-s. (4).** — [1] Provisions of sub-s. (4) are mandatory and hence the R. T. A., cannot grant a permit before considering the representations which have been made. 1953 Trav-Co 74 (76) [AIR V 40 C 26] : ILR (1953) Trav-Co 234.

[2] The Regional Transport Authority can consider only such objections against an applicant as are set out in a representation submitted in writing in accordance with the provisions of S. 57. 1956 Madh-B 231 (235) [AIR V 43 C 90] (DB). (Objection for grant of permit to a person not taken before R.T.A.—The Appellate authority cannot consider such an objection.)

[3] A person who does not make his representation within the time specified in sub-s. (3) is not entitled to be heard at the time of hearing of the application for permit. 1953 Nag 150 (151) [AIR V 40 C 51] : ILR (1953) Nag 675 (DB) \* (57) 1957 Ker L T 629 (632, 633). (Party not filing representations in time becomes disentitled to any notice of appeal also.) \*1955 Mad 660 (661) [(S) AIR 42 C 210] : ILR (1956) Mad 498 (DB). (Hence he is also not entitled to a notice or hearing in the revision preferred against the order of the R. T. A., because he cannot be considered to be a party to the proceedings.)

[4] Section 57 (4) prohibits a Regional Transport Authority from considering representations received after the appointed date. 1959 Andh-Pra 321 (325) [AIR V 46 C 93] : ILR (1959) Andh-Pra 54 (DB).

[5] In an appeal under cl. (a) of S. 64 by the person whose application for a permit has been rejected the appellate authority is fully competent to consider the question whether the permit had been wrongly refused to the appellant and granted to another and for that purpose also any objection of the nature specified under Cl. (f) of that section even though the appellant had not taken that objection before the Regional Transport Authority in the manner provided by S. 57. 1959 Assam 183 (187) [AIR V 46 C 40] : ILR (1957) 9 Assam 206 (DB).

[6] Sub-section (4) has the effect of only debarring a person whose permit is affected by the proposed variation of the permit of another from making representations before the Regional Transport Authority when he has failed to prefer his objections to the variation within the time permitted by law as laid down in sub-s. (5) read with sub-s. (3). It has not the effect, whether before or after the amendment of the Act in 1956, of depriving the right of such a person to appeal under cl. (b) of S. 64 on the ground of his non-compliance with those sub-sections. 1959 Raj 41 (43) [AIR V 46 C 12] : ILR (1956) 8 Raj 1112 (DB).

[7] The jurisdiction of the appellate authority to entertain an appeal under cl. (f) of S. 64 at the instance of a person depends on that person having made his grievance in a representation or objection in the form and manner prescribed by this section. Where the appellant is not so qualified his appeal cannot be entertained however hard his case may be. 1953 Vindh-Pra 41 (42) [AIR V 40 C 21] \* 1951 Orissa 81 (84) [AIR V 38 C 26] (DB).

[8] The proper time for the persons interested in the matter for making representations against the grant of a permit is when the ap-



**Section 57 — Note 4 (contd.)**

plication has been published by the Regional Transport Authority as required by S. 57. That is the only opportunity which has been allowed to them under the law for making representation. They have no right of being heard by the appellate authority. 1959 Raj 121 (123) [AIR V 46 C 46] : ILR (1959) 9 Raj 120 (DB).

[9] Sub-section (4) which requires representations to be in writing does not apply to the representations of existing operators which are made under S. 47 (1). Hence they do not lose their right of appeal under cl. (f) of S. 64 because of their not having objected to the grant of the permit in writing in accordance with sub-s. (4) of this section. (55) ILR (1955) Trav-Co 52 (64). (The sub-section applies only to the representations made by private individuals in response to the notification published under sub-s. (3).)

[10] A person who does not oppose the application for a permit by filing objections under sub-s. (3) cannot appeal against the order granting the permit. Hence he cannot also be aggrieved if the appellate order reverses the order of the Regional Transport Authority refusing a permit and grants one to the applicant. That being so he is not entitled to challenge the appellate order by an application under Art. 226 of the Constitution. 1952 Trav-Co 443 (444) [AIR V 39].

[11] The omission of an applicant to take objections to the rival applications will not debar him from seeking remedy under Art. 226 of the Constitution where no orders have been passed by the Regional Transport Authority on his application. His omission can only debar him from challenging the validity of the permits granted to the rival applicants. 1953 Raj 1 (3) [AIR V 40 C 1] : ILR (1952) 2 Raj 265 (DB).

[12] The mere fact that the Regional Transport Authority heard an objector who did not file his representations within time is not sufficient to condemn its order refusing the renewal of a permit which had in fact been passed without taking notice of those belated representations. 1957 Pat 732 (734) [AIR V 44 C 219] (DB).

[13] The requirement of furnishing a copy of the application is with respect to an application for a permit, and need not necessarily apply to an objection in respect of the variation of the conditions of the permit. 1956 Raj 125 (126) [S] AIR V 43 C 38] : ILR (1956) 6 Raj 86 (DB).

**5. Hearing of objectors — Sub-s. (5). —**

[1] The failure of the Regional Transport Authority to give a hearing as required by sub-s. (5) to the person who has made representations invalidates its entire proceedings. (54) Madh-B L J 1954 H C R 91 (96) (DB).

[2] The provisions of sub-s. (5) are mandatory. Hence the transport authority in granting permits cannot act in a manner which has the effect of depriving the intending objectors an opportunity to state their objection and be heard in support of them. If it does so the granting of the permits would be arbitrary

and against the provisions of law. 1960 Manipur 36 (40) [AIR V 47 C 10]. (Notice of meeting not given—Meeting held before last date fixed for receipt of representations — Consequently no representations considered or objector heard — Order granting permits cannot be sustained.)

**6. Representations in the case of contract carriage permits—Sub-s. (6). —** [1] The provision relating to the hearing of a representation against the grant of renewal of a contract carriage permit contained in sub-section (6) is mandatory. 1951 Him-Pra 36 (46) [AIR V 38 C 11] + (57) 61 Cal W N 590 (596).

**7. Reasons for refusal — Sub-s. (7). —** [1] The Regional Transport Authority functions as a quasi-judicial body when dealing with the grant or refusal to grant permits and hence its order should ex facie show reasons for making it in a succinct form. 1957 Raj 237 (239) [AIR V 44 C 90] : ILR (1955) 5 Raj 545 (DB) + 1959 Mys 72 (73) [AIR V 46 C 28] : ILR (1958) Mys 472 (DB). (Issue of permits — Reasons must be clearly stated in such a manner which would enable the appellate Court to canvass its correctness.) + 1953 Mad 59 (60) [AIR V 40 C 19]. (Regional Transport Authority when issuing a permit should clearly state its reasons for doing so, so that an appellate authority may be in a position to canvass those reasons.)

[2] The R. T. A. selecting some out of the applications for granting permits must give the reasons which weighed with it for preferring those applications over the others. That there was no necessity for additional bus service over and above the permits sanctioned on the route is no such reason. 1955 N U C (Trav-Co) 2564 [AIR V 42].

[3] Failure on the part of the Regional Transport Authority to give to an applicant for permit reasons for refusal thereof in accordance with S. 57 (7), Motor Vehicles Act and consequent rejection of the application are prima facie arbitrary. 1953 Orissa 235 (236) [AIR V 40 C 65] (DB). (The High Court can interfere and issue writ against the decisions of Statutory Tribunals like R. T. A and S. T. A when such decisions disclose a violation of provisions of the Act.)

[4] The reasons for refusal for permit must not be too vague and inadequate. 1956 Cal 490 (495) [AIR V 43 C 142]. (Refusal on the ground that in the considered opinion of the R. T. A the applicant was not found deserving is too vague.)

[5] Where the reasons for refusing the applications for permit are given by the R. T. A. in a rolled up manner in respect of a group of applications and the individual cases are not dealt with separately, there is a non-compliance of S. 57 (7). 1957 Cal 638 (643) [S] AIR V 44 C 165] : ILR (1958) 1 Cal 466. (Failure to give reasons for each individual case hampers him in the matter of preferring appeal because he would not be in a position to know which particular reason was applied to him.)

[6] Reasons which are based on considerations not mentioned under S. 47 cannot



### Duration and renewal of permits.

<sup>a</sup>[(1) (a) A stage carriage permit or a contract carriage permit other than a temporary permit issued under section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit.

(b) A private carrier's permit or a public carrier's permit other than a temporary permit issued under section 62 shall be effective without renewal for a period of five years.]

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit :

<sup>b</sup>[Provided that the application for the renewal of a permit shall be made, —

(a) in the case of a stage carriage permit or a public carrier's permit, not less than sixty days before the date of its expiry ; and

(b) in any other case, not less than thirty days before the date of its expiry ;]

Providing <sup>b</sup>[further] that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

### Section 57 — Note 7 (co. td.)

justify the refusal of a stage carriage permit. Thus a refusal on the ground of the decision of the Government to nationalise the motor transport is not sustainable. 1954 Assam 212 (217) [AIR V 41 C 61] ; ILR (1955) 7 Assam 7 \* 1956 Pat 73 (80) [(S) AIR V 43 C 20 (DB)].

[7] Where reasons are given by the Road Traffic Board in the order refusing an application for permit the fact that the order could with advantage have been written in a more detailed and elaborate fashion is no reason to hold that it does not comply with the provisions of sub-s. (7) of S. 57. 1957 Trav-Co 254 (255) [AIR V 44 C 95].

[8] The failure of the R. T. A. to give reasons for the refusal of a permit is a defect which can be set right by the appellate authority in its own order. 1960 Andh Pra 371 (2) (373) [AIR V 47 C 121]. (Hence the appellate order which has set right the defect cannot be set aside on the ground of the defect in the order of the R. T. A.)

[9] The word "order" is loosely used in Rule 4-37 (3) of the Punjab Motor Vehicles Rules, 1949, for the reasons for the refusal referred to in sub-s. (7) of this section. That rule requires copies of the orders against which appeals can lie under S. 64 should be given to the parties by the R. T. A. A mere hearing by the parties when the order is being dictated would not amount to a receipt of the order or reasons for the refusal within the meaning of that rule. ('49) 28 Lah L Tim 1 (2) (East Punj).

### 8. Variation of conditions—Sub-s. (8).—

[1] It is true that S. 57 does not apply to temporary permits but the procedure prescribed by it cannot be deviated from when what is sought to be done amounts not to the allowing of a deviation of the route in a temporary permit but in a regular permit. Thus where after regularising a temporary permit the authority allows a deviation of the route mentioned in the regular permit issued after such regularisation and enters the same on it without following the procedure mentioned in the section it must be held that it has not

been validly done. 1959 Punj 638 (642) [AIR V 46 C 203] ; ILR (1959) Punj 2121.

[2] A temporary variation of the conditions of a permit allowed without following the procedure prescribed by S. 57 is illegal not only on that ground but also because there is no provision in the Act for allowing such a variation. 1960 Ker 239 (240) [AIR V 47 C 116]. (Order allowing temporary variation of route.)

[3] An application for refixation of the starting and terminal points is not an application for varying the conditions of the permit by inclusion of a new route or routes or a new area within the meaning of clause (8). Even if the order granting such an application results in the increase of the frequency of the service it will be amply protected by the proviso to that sub-section. 1958 Ker 339 (340) [AIR V 45 C 121].

[4] Grant of permit to carry on bus service between two points — Transport Authority curtailing distance temporarily till repair of road—It is modification of permit which can be effected without going into formalities requisite for issue of fresh permit. 1955 N U C (Trav-Co) 5102 [AIR V 42].

## SECTION 58 — SYNOPSIS

### 1. Duration of permits.

### 2. "Without renewal."

### 3. Renewal of permits.

1. Duration of permits. — [1] A permit though issued for a period of less than three years would be valid for a period of three years. 1959 Cal 543 (548) [AIR V 46 C 148]. [See however 1952 Madh B 128 (129) [AIR V 39]. (Case decided before the amendment of the section—Permit issued for one year cannot remain in force for a period of 3 years under S. 58 of the Act as extended to Madhya Bharat.)]

[2] Section 58 does not permit an interpretation to be placed on it by which a temporary permit, wrongly issued by the R. T. A. in the absence of any justification under S. 62, could be treated as a regular

<sup>b</sup>[(3) Notwithstanding anything contained in the '[first] proviso to sub-section (2), the Regional Transport Authority may entertain an application for the renewal of a permit after the last date specified in the said proviso for the making of such an application, if the application is made not more than fifteen days after the said last date and is accompanied by the prescribed fee.]

[a] Substituted for the original sub-section (1), by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 52 [w. e. f. 16-2-1957]. [b] Inserted, *ibid.* [c] Inserted by the Repealing and Amending Act, 1960 (LVIII of 1960), S. 3 and Sch. II [26-12-1960].

### OBJECTS AND REASONS

"Section 58 (1) has been amended by some State Governments. In order to supersede such State enactments and make section 58 (1)

applicable in all the States, it is necessary to re-enact that sub-section . "

—S. O. R.

### STATE AMENDMENTS

[Note.—The amendments made in section 58 by the State Legislatures are given below. In the light of the new sub-section (1) in place of the former sub-section (1) of section 58, it is doubtful whether the amendments made in sub-section (1) by the State Legislatures continue to be valid. See the observation produced under the heading "Objects and Reasons" above.]

#### ANDHRA PRADESH

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, in sub-section (1) of section 58 *omit* the words "not less than three years and not more than five years" and the Proviso. —Madras Act XX of 1948, S. 10 [21-12-1948].

#### BIHAR

In its application to the State of Bihar, to section 58 *add* the following sub-section, namely,—

"(3) Notwithstanding anything contained in sub-section (1), the State Government may, by order, direct the State Transport Authority or a Regional Transport Authority to limit to any period which shall be less than the minimum fixed in the said sub-section, the period of validity of permits or class of permits in respect of transport vehicles or class of transport vehicles used in areas or on routes or portions thereof specified in a notification under sub-section (1) of section 66A."

—Bihar Act XXVII of 1950, S. 10 [21-7-1950].

#### Section 58 — Note 1 (*contd.*)

permit, ignoring the fact that the provisions of the Act relating to the issue of such permits have not been complied with. Hence, it is also not possible to hold that the permit would remain valid without renewal for a period of three years under the provisions of the section. 1951 All 257 (262) [AIR V 38 C 51] : 1 L R (1951) 1 All 269 (FB) \* 1953 Assam 74 (76) [AIR V 40 C 31] : 1 L R (1952) 4 Assam 9 (DB). (Temporary permit not justified by S. 62 can only be set aside—They cannot be treated as permits having a duration of three years under S. 58.)

[But see 1945 Cal 260 (263) [AIR V 32] : 1 L R (1944) 1 Cal 631 (DB). (Case decided before the amendment of sub-section (1) but not affected by the amendment—Permit neither a temporary permit under S. 62 nor one issued after following the procedure prescribed by S. 57—Still it is not void but would remain valid until it is revoked—As such it would attract the provisions of para. 1 of the section.)]

[3] The fact that the Chairman of the State Transport Authority by an order allowed the permit-holders to ply their buses on the routes during the course of the proceedings started by them with respect to certain serious allegations against the Regional Transport Authority who had refused to renew their permits by the Regional Transport Authority does not mean that the permit-holders were merely temporary

permit-holders. 1954 Assam 219 (222) [AIR V 41 C 62] : 1 L R (1955) 7 Assam 23 (DB).

[4] The renewal of a permit falling within clause (a) of sub-section (1) should be made for a duration of not less than three years and not more than five years and the R. T. A. has no discretion in the matter. Clause (a) of sub-section (1) applies to the cases of grants of permits as well as renewals of them. 1960 S C 321 (326) [AIR V 47 C 55] : 1960-2 S C R 146 \* 1951 Him Pra 36 (45) [AIR V 38 C 11].

2. "Without renewal." — [1] The phrase 'without renewal' in S. 58 shows that the Legislature had in contemplation cases where the competent transport authority had in fact issued permits for a fixed period and that period was less than three years. 1945 Cal 260 (263) [AIR V 32] : 1 L R (1944) 1 Cal 631 (DB).

3. Renewal of permits. — [1] In the case of applications for the renewal of old permits appointment of dates for their receipt under the latter part of sub-s. (2) of S. 57 is not necessary. Old applicants must be presumed to know the dates on which their permits are to expire and therefore to be in a position to apply within the time statutorily prescribed for making applications for permits. 1952 All 437 (440) [AIR V 39] : 1 L R (1952) 1 All 159.

[2] Any rule framed by the Government under the Act which enlarges the period prescribed by sub-s. (2) for making an application for renewal of a permit is ultra vires and in-

**MADHYA PRADESH**

**MAHAKOSHAL.**—In its application to the Mahakoshal region of the State of Madhya Pradesh, in section 58—

(a) in sub-section (1) after the words "Regional Transport Authority" insert the words "or the State Transport Authority on the issue of a direction under the Proviso to section 45";

(b) after sub-section (2) add the following sub-section, namely,—

"(3) Notwithstanding anything contained in sub-section (1), the State Government may order a Regional Transport Authority to limit the period for which any permit or class of permits is issued to any period less than the minimum specified in the Act."

—C. P. & Berar Act III of 1948, Ss. 7 and 8. [16-1-1948.]

**MADRAS**

In its application to the pre-reorganised State of Madras, excluding the transferred territories, section 58 is amended; the amendment made is the same as given under Andhra Pradesh.

—Madras Act XX of 1948, S. 10. [21-12-1948.]

**MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra, in section 58—

(a) after the words "Regional Transport Authority" insert the words "or the State Transport Authority";

(b) after sub-section (2) add the following sub-section, namely,—

"(3) Notwithstanding anything contained in sub-section (1) above, the State Government may order a Regional Transport Authority or the State Transport Authority to limit the period for which any permit or class of permits is issued to any period less than the minimum prescribed in the Act." —Bom. Act VII of 1947, Ss. 8 and 10. [23-3-1947.]

**VIDARBHA.**—The amendments made in section 58 by C. P. & Berar Act III of 1948 and given under Madhya Pradesh apply to the Vidarbha area of the State of Maharashtra.

**MYSORE**

In its application to the whole of the Mysore area, to section 58 add the following sub-section, namely,—

"(3) Notwithstanding anything contained in sub-section (1), the State Government may order a Regional Transport Authority or the State Transport Authority to limit the period to which any permit or class of permits is issued to any period less than three years."

—Mysore Act XIV of 1953, S. 2. [23-7-1953.]

**Section 58 — Note 3 (contd.)**

operative. 1957 Ker 187 (188) [(S) AIR V 44 C 94]. (Rule 195 of the T. C. Motor Vehicles Rules which enlarges the prescribed period of sixty days to two months in the case of stage carriage permits or public carriers permits is therefore not valid.)

[3] Applications for renewals of permits have to be advertised under S. 57 because sub-s. (2) of this section requires that they should be treated as applications for permits. (57) 1 L R (1957) 7 Raj 727 (734) (DB).

[4] A renewed permit amounts in effect to a new permit granted for a fresh period replacing the old one. Hence a suspension of the old permit ordered for the breach of one of its conditions cannot be enforced against the renewed permit. 1957 Andh Pra 470 (471, 472) [AIR V 44 C 149] (DB).

[But see 1957 Mad 392 (395) [(S) AIR V 44 C 119] : 1 L R (1957) Mad 675.]

*Discretion of R. T. A.*

[5] A holder of stage carriage permit cannot claim the renewal of his permit as a matter of right. 1956 S C 298 (305) [(S) AIR V 43 C 53] : 1956 S C R 28 + 1957 Assam 139 (142) [(S) AIR V 44 C 35] : 1 L R (1957) 9 Assam 479 (DB) + 1957 Orissa 121 (124) [AIR V 44 C 38] : 1 L R (1957) Cut 117 (DB). (The word "may" in the context of sub-s. (2) does not appear to have an imperative force.) + 1955 Sac 57 (59) [(S) AIR V 42 C 22] (DB). [Permit-holder has no absolute right to renewal at old rates—Renewal at rate below prescribed minimum —

Permit-holder cannot accept permit and repudiate the rate.)

[6] An application for renewal of a stage carriage permit along a particular route will generally have to survive the competition along with other applicants. All that the applicant for renewal can claim is a preference over others, if other conditions are equal. 1957 Andh Pra 470 (471, 472) [AIR V 44 C 149] (DB). (*Overruled* by AIR 1957 S C 489 on another point.) + 1959 Mys 17 (20) [AIR V 46 C 5] : 1 L R (1958) Mys 421.

[7] The provisions of sub-section (2) regarding the renewal of permits, being procedural, would apply as they stand amended to applications made before such amendment but still pending for disposal. Hence even though an applicant would have been entitled to a renewal as the sole applicant under sub-section (2) as it stood at the time of his making the application he would not continue to be so entitled even after the amendment when there are other applicants also. 1957 Orissa 121 (124) [AIR V 44 C 38] : 1 L R (1957) Cut 117 (DB).

[8] Since an application for the renewal of a permit has to be treated on the same basis as an original application for a permit the provisions of S. 47 (1) would govern such an application also. Hence the R. T. A. can take into account any representations made by any person, body or association interested in road transport facilities in disposing of the application. 1956 Madh B 175 (176) [AIR V

## ORISSA

In its application to the State of Orissa, in section 58—

(a) for sub-section (1) *substitute* the following sub-section, namely,—

“(1) A permit other than a temporary permit issued under section 62 shall normally be effective without renewal, for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit :—

Provided that if the Regional Transport Authority is satisfied that an existing or a prospective State Transport Service can or is going to be extended to any route or area on the permit within a period of three years from the date on which the permit is to be effective, the permit shall be for such shorter period as the Regional Transport Authority may consider suitable in order to avoid conflict with the prospective extension of such State Transport Service.”

(b) In the Proviso to sub-section (2) after the word ‘permits’ *insert* the words “by parties other than a State Transport Service”. —Orissa Act I of 1949, S. 6.<sup>a</sup>

[a] For the date of commencement of this amendment in different districts of the State of Orissa and the consequences that follow on such commencement, *see* foot-note ‘a’ given under clause (29B) of section 2 : State Amendment — Orissa.

## WEST BENGAL

In its application to the State of West Bengal, in section 58—

(a) in sub-section (1) after the words “Regional Transport Authority” wherever they occur *insert* the words “or the State Transport Authority” ;

(b) after sub-section (2) *add* the following, namely,—

“(3) Notwithstanding anything contained in sub-section (1), the State Government may order a Regional Transport Authority or the State Transport Authority to limit the period for which any permit or class of permits is issued to any period less than the minimum prescribed in this Act.”

—W. B. Act XIX of 1951, Ss. 9 and 11. [13-7-1951.]

## Section 58 — Note 3 (contd.)

43 C 74] (DB) \* 1955 Sau 57 (59) [(S) AIR V 42 C 22] (DB).

[9] A Regional Transport Authority cannot refuse a stage carriage permit or its renewal on the ground of a State monopoly or on the ground that on some future date the State Government may run their own service. 1956 Pat 73 (80) [(S) A I R V 43 C 20] (DB) \* 1951 Him Pra 36 (47) [AIR V 38 C 11].

[10] The R. T. A. is in the nature of a quasi-judicial body and in acting as such it has to have some proof of the conviction of the applicant before it can refuse a renewal of his permit on that ground. 1958 All 30 (31, 32) [A I R V 45 C 10]. (Hence a refusal on the basis of police reports of such convictions is not justified.)

[11] A permit granted without following the procedure prescribed by S. 57 can at best be regarded only as an irregular permit and not as a permanent one and hence the refusal by the R.T.A. to renew such a permit infringes no legal right of the holder thereof. 1952 Nag 353 (355) [AIR V 39]; ILR (1953) Nag 110 (DB).

[12] A refusal to renew the permit of an applicant on the ground of his convictions cannot be said to be discriminatory solely on the ground that the R. T. A. had in other cases granted permits to persons with four or five convictions. The decision in each case must depend on the facts of that particular case. 1958 All 30 (32) [AIR V 45 C 10]. (But where the renewal had been refused on non-existent convictions and challans the High Court would quash the order of the R. T. A. and direct it to dispose of the application according to law.)

[13] The provisions of S. 43 read with S. 58 and S. 58A (inserted by the C. P. and Berar Act, 3 of 1948) which empower the

State Government to place restrictions on the plying of public buses, to confine the use of public highways for running buses to only such persons as have been granted permits and to cancel or refuse permits are clearly saved by cl. (6) of Art. 19 of the Constitution. Hence the refusal of the R. T. A. to renew certain permits in accordance with the directions issued by the Government cannot be said to violate the right of the permit-holders given to them by Art. 19 (1) (g) of the Constitution. 1952 Nag 353 (354) [A I R V 39]; I L R (1953) Nag 110 (DB).

[14] A refusal on the part of the Regional Transport Authority to renew a permit under the Act to a person who has been deliberately and habitually defaulting in payment of taxes cannot be said to be not a reasonable restriction on the right of that person under Art. 19 (1) (g) of the Constitution in the interest of the public. 1955 Mad 205 (206) [(S) A I R V 42 C 51] (DB).

[15] Application for renewal of permit heard by R. T. A. and judgment reserved — Subsequent change in constitution of R. T. A. — Judgment delivered by new R. T. A. after receipt of enquiry report but without giving fresh hearing, is nullity. 1960 Pat 333 (338) [AIR V 47 C 118] (DB).

## Validity of renewal permits.

[16] The validity of the renewed permit depends on the validity of the original permit and consequently a Court is entitled to decide the question whether the permit was rightly granted or not even after the expiry of the period of the permit. 1957 Andh Pra 739 (743) [AIR V 44 C 233].

[17] When an application for renewal is made, the illegality of a permit is a matter to be taken into consideration by the R. T. A. 1957 All 254 (256) [(S) A I R V 44 C 73].

## SECTION 58A MADHYA PRADESH

## STATE AMENDMENTS

**MAHAKOSHAL**—In its application to the Mahakoshal region of the State of Madhya Pradesh, after section 58 *insert* the following section, namely,—

"58A. *Grant of permit to State Government, local authority, etc.*—Notwithstanding anything hereinbefore contained, the State Government may by order direct any Regional Transport Authority or the State Transport Authority to grant a stage carriage permit to the State Government or any undertaking in which the State Government is financially interested or a permit-holder whose permit has been cancelled under section 43 or any local authority specified in the order."

—C. P. & Berar Act III of 1948, S. 9. [16-1-1948.]

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, after section 58 *insert* the following section, namely,—

"58A. *Grant of permit to local authority.*—Notwithstanding anything hereinbefore contained, the State Government may by order direct any Regional Transport Authority or the State Transport Authority to grant a stage carriage permit to the State Government or any local authority specified in the order."

—Bom. Act VII of 1947, S. 11. [23-3-1947.]

**VIDARBHA**.—The newly *inserted* section 58A by C. P. & Berar Act III of 1948 given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

## WEST BENGAL

In its application to the State of West Bengal, the newly *inserted* section 58A is the same as the one given under Maharashtra. —W. B. Act XIX of 1951, S. 12. [13-7-1951.]

## 59. General conditions attaching to all permits.

(1) Save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority

### Section 58 — Note 3 (contd.)

(S. T. A. in appeal holding certain permits illegal but without interfering with their operation directing R. T. A. not to renew them —R. T. A. is bound by such direction.)

[18] When the grant of a permit is set aside by a higher authority the renewal thereof also stands automatically set aside and does not continue to subsist for the period for which it was renewed. 1957 S C 489 (492) [(S) AIR V 44 C 74] : 1957 S C R 663. (AIR 1957 Andh Pra 470, *Overruled.*) \* 1958 Mad 143 (144) [AIR V 43 C 74] (DB).

[19] Renewal of permit, subject to implied condition that the renewal should stand cancelled if the right of the appellant to the original permit was negated by the Court, does not render it inoperative. 1957 S C 489 (494) [(S) AIR V 44 C 74] : 1957 S C R 663.

### Remedy against refusal to renew.

[20] A person who is aggrieved by the refusal to renew a permit can file an appeal under S. 64 (e). 1956 Vindh Pra 38 (39) [AIR V 43 C 20].

[21] Where an application for renewal of permit for buses is disposed of without following the procedure laid down by Ss. 47 (1) and 57 (3) and the applicant has been given no opportunity of being heard under S. 57 (5) and the application is disposed of by reference to extraneous and illegal matters, the applicant's sole and correct remedy is that provided by S. 45 of the Specific Relief Act. 1948 Mad 400 (409) [AIR V 35 C 197] (DB).

[22] When the renewal of a permit was not refused on the ground of previous conviction for violating rules of the permit but those convictions were only the basis for the opinion of the appellate authority that it was not in the public interest to renew the permit and

the material on which the appellate authority came to this view was relevant to the subject on which the authority had to form its view it is not for the High Court in the exercise of its jurisdiction under Art. 226 of the Constitution to sit in judgment and hold whether that view was right or wrong. 1955 N U C (All) 3540 [AIR V 42].

[23] Where the R. T. A. renewed the permit under S. 58 (2) for a period of one year, and in a writ petition the order regarding the period is held to be illegal, it is open to the Supreme Court to sever the illegal part of the order from the legal part and quash the illegal part and issue a direction in the nature of mandamus requiring the authority to carry out the duty laid on it by S. 58 (1) (a) read with S. 58 (2) in granting the renewal. 1960 SC 321 (327) [AIR V 47 C 55] : 1960-2 SCR 146.

### Section 58-A (Madhya Pradesh)—Note 1

[1] Under S. 43 read with S. 58 and S. 58-A as inserted by C. P. and Berar Act, 3 of 1948 it is open to the State Government to place restrictions on the plying of buses, to confine the use of public highways for running public buses to only such persons as have been granted permits under the Act and to cancel or refuse to renew permits held by an operator or class of operators and these provisions have been clearly saved by clause (6) of Art. 19 of the Constitution. 1952 Nag 353 (354) [AIR V 39] : 1 L R (1953) Nag 110. (Hence the refusal of the R. T. A. to renew the permit does not violate the fundamental rights of a permit-holder.)

### Section 59 — Note 1

[1] A partnership in respect of a lorry business which involves a transfer of a permit will

which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit—

- (a) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter V and the rules made thereunder;
- (b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;
- (c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under section 43 or observed in connection with any vehicle or vehicles to which the permit relates;
- (d) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of section 72;
- (e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; and
- (f) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed.

#### STATE AMENDMENTS

##### MADHYA PRADESH

**MAHAKOSHAL** — In its application to the Mahakoshal region of the State of Madhya Pradesh, in clause (c) of sub-section (3) of section 59 for the words "or minimum" *substitute* the words "minimum or specified." —C. P. & Berar Act III of 1948, S. 10 [16-1-1948].

##### MAHARASHTRA

**VIDARBHA** — The amendment made in section 59 (3) (c) by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

##### Section 59 — Note 1 (*contd.*)

be illegal and void, as sub-section 1 expressly prohibits transfer of a permit except with the permission of the Transport Authority. 1957 Mad 620 (620) [AIR V 44 C 185] (DB).

[2] The mere purchase of a bus even with the good will of the business does not entitle the transferee to use the bus in accordance with the permit which covers it at the time of the sale. In order to enable the transferee to use the bus under the permit, the permit itself must be transferred to him with the consent of the Transport Authority. (155) ILR (1955) Madh B 211 (217) (DB).

[3] Where the transfer of a permit is in contravention of sub-sec. (1) of this section, the law continues to treat the transferor as the holder of a permit in spite of the transfer and hence the transferor will not be disentitled to an order under sub-sec. (2) read with rule 63 of the U. P. Motor Vehicles Rules granting him permission to replace the vehicle covered by the permit in question. Therefore, the fact that the transferor made his application for permission concealing the fact of the transfer cannot entitle the Transport Authority to refuse permission under the sub-section. 1960 All 247 (251, 252) [AIR V 47 C 58].

[4] Where at the time of amendment of a permit by replacement of vehicle the permit-

holder concealed its partnership with a third person with regard to the replaced vehicle, it cannot be said that the permit-holder obtained a permit by fraud or misrepresentation within the meaning of S. 60 (1) (d) and therefore an order cancelling such permit under S. 60 (1) (d) by R. T. A. would be bad in law. 1960 All 435 (436) [AIR V 47 C 108] (DB)\* 1960 All 247 (251, 252) [AIR V 47 C 58].

[5] The permit-holder cannot claim an extension of the period of his permit on the ground that it has been amended to give effect to the replacement of the vehicle in accordance with the provisions of sub-s. (2) of this section. An amendment under the sub-section does not bring into existence a new permit. 1960 All 435 (436) [AIR V 47 C 108] (DB).

[6] There is no inconsistency between sub-section (2) of this section and R. 75 of the Bengal Motor Vehicles Rules. That rule merely adds to or supplements the provisions of the sub-section. Hence the rule is not invalid as being ultra vires the powers of the rule-making authority under S. 68. (157) 81 Cal W N 590 (598).

[7] An order varying the conditions which attach to a permit generally under S. 59 is appealable under S. 64. 1957 Raj 312 (317) (S) [AIR V 44 C 116] : ILR (1957) 7 Raj 806 (FB).

**[59A. General form of permits.**

Every permit other than a temporary permit issued under section 62 shall consist of two parts, Part A of which shall be complete in itself and shall contain all the necessary particulars of the permit and the conditions attached thereto, and Part B of which shall be a summary of the permit containing such particulars as may be prescribed; and where a permit covers more than one vehicle, there shall be issued to the holder of the permit as many copies of Part B as there are vehicles authorised by the permit to be in operation at any one time.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 53 [w. e. f. 16-2-1957].

**OBJECTS AND REASONS**

"At present, the form of permits is left to be regulated by rules made by the State Governments. In order to ensure uniformity, it is desirable to lay down a general provision for the guidance of the States in this matter. It has, therefore, been proposed that every re-

gular permit shall consist of two parts, part 'A' being the complete document in respect of the vehicles for which a permit is sought and part 'B' being a summary for display on each vehicle."

—S. O. R.

**60. Cancellation and suspension of permits.**

(1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

- (a) on the breach of any condition specified in sub-section (3) of section 59, or of any condition contained in the permit; or
- (b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or
- (c) if the holder of the permit ceases to [own] the vehicle or vehicles covered by the permit, or

**SECTION 60 — SYNOPSIS**

1. Scope.
2. Authority granting permit can alone suspend or cancel it.
3. Cancellation of permits.
4. Opportunity to explain.
5. Suspension of permits.
6. Compounding contraventions.
7. Order under section can be delivered orally.

1. **Scope.**—[1] Section 60 and S. 123 are designed for different purposes and there is no conflict between them. It is always open to the authorities to take departmental action under S. 60 for a contravention of conditions of a permit or to prosecute the permit-holder under S. 123. ('57) 1957-2 Andh W R 296 (298) + 1955 Andh 277 (278) [A I R V 42 C 99] (DB).

[2] Action under the section against a permit-holder for the contravention of the conditions of the permit involves only the exercise of departmental control and not a punishment for an offence. Therefore the permit holder cannot claim the benefits of the exception provided under S. 94 of the Penal Code against such action. ('57) 1957-2 Andh W R 296 (298).

2. **Authority granting permit can alone suspend or cancel it.**—[1] In the case of a permit granted by the appellate authority in appeal under S. 64 the Regional Transport Authority from whose order the appeal was filed is competent to cancel the permit under sub-section (1), when necessity arises for it.

1957 Raj 114 (115) [A I R V 44 C 45] : ILR (1956) 8 Raj 1057 (DB).

[2] There is no real basis for holding that S. 60 is a special provision and that R. 134-A (xi) should be construed as a general provision regulating the jurisdiction to cancel or suspend permits. S. 60 of the Act is the only provision in the Act itself, which provides for the exercise of the power to suspend or cancel a permit. It is that power that can be delegated under S. 44 (5) of the Act. It is that power that can be delegated to the Regional Transport Officer under R. 134-A (xi). If the delegation is valid, it is that power, subject to the conditions and limitations imposed by rule 134-A (xi), that vests in the Regional Transport Officer, and that vesting is valid. 1957 Mad 387 (391, 392) [(S) A I R V 44 C 118] : ILR (1957) Mad 461 + 1958 Ker 109. (110) [A I R V 45 C 43] : ILR (1958) Ker 59 (DB).

[But see 1957 Andh Pra 1027 (1031) [(S) A I R V 44 C 332] : ILR (1957) Andh Pra 643 (FB) + 1956 Andh 232 (234) [A I R V 43 C 65] (DB). (This case must be taken to have been implicitly overruled on another point in A I R 1957 S C 489.)]

[3] The Assam State Road Transport Act, 1954 having received the sanction of the President before it was put into operation, the provisions of Ss. 13 & 14 which empowered the State Government to cancel the permit notwithstanding the provisions of S. 60 are valid. 1957 Assam 139 (142) [(S) A I R V 44 C 35] : ILR (1957) 9 Assam 479 (DB).

3. **Cancellation of permits.**—[1] The R. T. A has no power under the law to cancel the permits granted by it except in accord-



- (d) if the holder of the permit has obtained the permit by fraud or misrepresentation ; <sup>b</sup>[or]  
<sup>b</sup>[(e) if the holder of the permit, not being a private carrier's permit, fails without reasonable cause to use the vehicle or vehicles for the purposes for which the permit was granted ; or  
 (f) if the holder of the permit acquires the citizenship of any foreign country :]

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to <sup>c</sup>[furnish] his explanation.

<sup>b</sup>[(1A) The transport authority which granted a permit may, after giving the holder thereof an opportunity to furnish his explanation, reduce either permanently or for such period as it thinks fit, the number of vehicles or the route or area covered by the permit on any of the grounds mentioned in sub-section (1).]

(2) Where a transport authority cancels or suspends a permit <sup>b</sup>[or reduces the number of vehicles or the routes or area covered by a permit], it shall give to the holder in writing its reasons for <sup>d</sup>[the action taken].

<sup>b</sup>[(3) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything

#### Section 60 — Note 3 (contd.)

ance with this section. Where the conditions specified by the section do not exist it cannot compel the operators to surrender their permits. 1955 Raj 14 (16) [AIR V 42 C 8] : I L R (1955) 5 Raj 127 (DB).

[2] Section 60 will apply and its conditions must be complied with only where a valid permit has to be cancelled. A permit which was void ab initio can be treated by the R. T. B. as invalid and of no value and no question of compliance with S. 60 can arise at all in such a case. 1954 Trav-Co 140 (141) [AIR V 41 C 49] (DB).

[3] There is no cancellation of a permit under S. 60 where the permit-holder is asked to surrender the permit on the appellate authority setting aside the order by which it had been granted. 1957 Cal 638 (645) [(S) AIR V 44 C 165] : ILR (1958) 1 Cal 486.

[4] Where a temporary permit to ply a bus during the pendency of appeal was granted to one of the applicants and the appellate authority decided in favour of another and granted him a permit, the provisions of S. 60 are not attracted. 1959 Assam 171 (172) [AIR V 46 C 37] (DB).

[5] The transport authority suspending a permit for the breach of a condition would not thereby be prevented from subsequently cancelling the permit where in the light of the subsequent events it feels that an order more drastic in character is called for. 1957 Ker 35 (36, 37) [AIR V 44 C 22].

[6] The fact that a prosecution is pending against a permit-holder on the allegation of his having contravened a condition of his permit cannot warrant the R. T. A. to draw an inference adverse to him and cancel his permit for the breach of that condition. 1958 All 30 (31) [AIR V 45 C 10].

[7] A permit can be cancelled even though a condition of the permit is broken by the conductor or other agent of the owner with or without his knowledge or even contrary to his instructions. 1957 Andh Pra 882 (885) [AIR V 44 C 271] : I L R (1956) Andh 591 (DB) \* 1956 Mad 678 (679) [AIR V 43 C 214] : ILR (1957) Mad 732. (Breach of condition against overloading.)

[See ('59) 1959-2 Andh W R 407 (411) (DB). (Suit for partition of joint family property—Defendant claiming certain buses standing in his name to be his individual property—Court appointing him as receiver because he was the permit-holder—Appointment objected to as wrong on the ground that he was only the representative of the joint family and his holding of permits had nothing to do with ownership—*Held*, objection was not convincing because the Motor Vehicles Act envisaged granting of permits only to the owner and holding him responsible as the permit-holder for any violation of the conditions of the permit.)]

[8] The R. T. A. can validly cancel a permit when it is proved to its satisfaction that the condition against overloading had been contravened. The manner in which it obtained information regarding the contravention of a condition does not affect its jurisdiction to deal with the matter. 1956 Mad 678 (678) [AIR V 43 C 214] : ILR (1957) Mad 732.

[9] A permit can be cancelled for fraud under this section even though the fraud had been practised only on agent of the Transport Authority or its office or subordinate and not directly on the authority itself. 1957 Raj 167 (168, 169, 170) [AIR V 44 C 66] : I L R (1956) 6 Raj 445 (DB).

[10] The failure to disclose that the vehicle for which permit is sought is the subject-matter of a partnership between the applicant and a third party does not amount to a fraud



contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.]

[a] Substituted for "possess", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 54 [w. e. f. 16-2-1957]. [b] *Inserted, ibid.* [c] Substituted for "submit," *ibid.* [d] Substituted for "revocation or suspension", *ibid.*

### OBJECTS AND REASONS

*Amendments made in 1956.* — "At present, when a permit-holder fails to use the vehicle for the purpose for which the permit was granted, his permit cannot be cancelled under section 60. The amendment in sub-section (1) makes the necessary provision and also confer on the Transport Authority the power of cancelling a permit if the permit-holder acquires citizenship of any foreign country. The amendment [by insertion of sub-section (1A)] will enable the Transport Authority to impose

the lesser penalty of reducing the number of vehicles or routes covered by a permit for breach of any of its conditions, instead of cancelling it . . . . The amendment [by insertion of sub-section (3)] authorises a Transport Authority to compound the penalty of cancellation or suspension of permit under sub-section (1) of section 60 against a cash penalty, if the holder of the permit agrees to such a course."

—S. O. R.

### SECTION 60A PUNJAB

### STATE AMENDMENT

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, after section 60 insert the following section, namely,—

"60A. *Power to cancel permits held by evacuees.* — The Transport Authority which granted a permit or the State Transport Authority may cancel the permit if the holder of the permit or, if the permit is held jointly or by a company or any other association of individuals, any such joint holders or members of the association or share-holders in the company, as the case may be, leaves, or has since the 1st day of March 1947, left, the State of Punjab for a place outside India, on account of civil disturbances, or the fear of such disturbances or the partition of the country."—E. P. Act XXVIII of 1948, S. 9 [12-7-1948].

### Section 60 — Note 3 (contd.)

or misrepresentation in the obtaining of the permit within the meaning of sub-s. (1) (d). Hence the permit cannot be cancelled on the ground of such non-disclosure. 1960 All 435 (436) [AIR V 47 C 108] (DB). (Affirming AIR 1960 All 247.)

[11] The fact that there are people who may be needy and who when compared with some of the applicants for the permit may be preferable, by itself is no ground for cancelling the permit granted to some of the applicants by the Regional Transport Authority. 1960 Assam 100 (107) [AIR V 47 C 28] (DB).

[12] The High Court in writ proceeding will not go into the sufficiency of the evidence supporting an order cancelling a permit which had also been confirmed by the appellate authority. 1955 N U C (All) 2743 [AIR V 42.]

[13] The proper remedy of an unsuccessful applicant seeking the cancellation of a permit granted to another on the ground that he had obtained it by misrepresentation is by way of an application to be made to the R. T. A. under S. 60. The High Court will not issue a writ under Art. 226 to quash the order granting that permit. 1959 Madh Pra 320 (321) [AIR V 46 C 107] (DB).

[14] A finding that a permit was obtained by fraud and misrepresentation amounts to an error of law apparent on the face of the record where it is not only unsupported by any evidence but it is also contrary to such evidence as there is. Hence the order of the R. T. A. cancelling the permit on the basis of that finding can be quashed by a writ of certiorari. 1953 All 641 (643) [AIR V 40 C 319] : ILR (1954) 2 All 402 (DB).

**4 Opportunity to explain.**—[1] Section 60 does not require that the authorities concerned should record any evidence. All that the proviso to sub-s (1) of S 60 requires is that, before a permit is cancelled, the holder of the permit should be given an opportunity to furnish his explanation. The person proceeded against has no right to insist that his witnesses should be examined when he is being proceeded against for a transgression of any of the matters enumerated in sub-s (1) of S 60, he has much less reason to complain when he neither produces nor offers to produce his witness. 1959 Mad 531 (532) [AIR V 46 C 170] : ILR (1959) Mad 901 : 1959 Cri L Jour 1443

[2] The S. T. A. remanding a case to the R. T. A. and further directing for the order of the R. T. A. curtailing the route to be kept in abeyance till the reconsideration of the case by the R. T. A. has jurisdiction also to direct the permit-holder to continue to ply the buses on the original route as mentioned in the permit until the reconsideration of the case by the R. T. A. It is true that the direction may involve him in proceedings under S 60 if he does not comply with it but on that ground it cannot be said that it has prejudiced him. If any such proceedings are started against him then he is entitled under the proviso to sub-s (1) to submit his explanation in such proceedings before the R. T. A. 1956 Raj 125 (126) [(5) AIR V 43 C 38] : ILR (1956) 6 Raj 86 (DB)

[3] Proviso to S 60 (1) cannot apply where the permits are not cancelled but only suspended. 1957 Trav-Co 141 (144) [AIR V 44 C 44] : ILR (1956) Trav-Co 1293 (DB).

**Section 60 (contd.)**

**5. Suspension of permits.** — [1] The power to suspend a permit for the breach of a condition specified in the permit does not depend upon the compliance or non-compliance with administrative instruction issued by the Government under S. 43A added to this Act by the Madras Act 20 of 1948. Such Instructions cannot override the discretionary power conferred upon the authority by S. 60. 1957 Andh Pra 882 (886) [A I R V 44 C 271] : I L R (1956) Andh 591 (DB). (Hence the non-compliance with G. O. No. 2771 dated 31-7-52 issued by the Andhra Government prescribing the manner of checking a bus for overloading does not invalidate the order of the R. T. A. suspending a permit when overloading had been established aliunde by other unimpeachable evidence.)

[2] The R. T. A. can validly suspend a permit on being satisfied that the condition against overloading had been contravened. Its jurisdiction to deal with the matter will not in any way be affected by the manner in which it obtained information of the contravention. 1956 Mad 678 (678) [A I R V 43 C 214] \* 1957 Trav-Co 141 (145) [A I R V 44 C 44] : ILR (1956) Trav-Co 1293 (DB).

[3] Where there is a permit for a stage carriage to ply only on a particular route and the owner of the carriage uses it for a trip on another route, it is a breach of the condition of the permit and the Regional Transport Authority has power to suspend the permit under S. 60 (1). 1955 Andh 277 (278) [A I R V 42 C 99] (DB).

[4] The permit of a transport vehicle cannot be suspended under sub-s. (1) (a) or (b) for not holding a certificate of fitness as required under S. 38 when the vehicle was checked. 1959 All 489 (491, 492) [A I R V 46 C 125].

[5] There being no duty imposed by S. 48 and Rule 81 of U. P. Motor Vehicles Rules upon a permit-holder not to carry passengers free of charge, the fact that the permit-holder carried his employees without any charge and without issuing tickets to them would not amount to violation of S. 48 and R. 81. The permit cannot be suspended on this ground. 1958 All 575 (577) [A I R V 45 C 144] : 1958 Cri L Jour 984 (DB).

[6] When carriage of mails has been made a condition of permit in accordance with R. 57A of C. P. and Berar Motor Vehicles Rules, the liability of the permit-holder to carry the mails does not arise till the rates and conditions are fixed by the R. T. A. Therefore unless the rates are fixed the refusal by the permit-holder to carry mails would not justify suspension of permit. (53) I L R (1953) Nag 461 (465) (DB).

[7] Permit cannot be suspended merely because permit-holders are a partnership firm and partners have fallen out amongst themselves. 1955 N U C (Cal) 2885 [A I R V 42].

[8] Where the Criminal Court discharges or acquits the permit-holder of an offence on the ground that he did not commit it the Regional Transport Authority cannot ignore those findings and suspend the permit for that very same offence. 1952 Mad 853 (855) [A I R

V 39] : ILR (1952) Mad 632 : 1953 Cri L Jour 8 (DB).

[9] The acquittal of the conductor of a bus from a charge of overloading, not on merits but on technical grounds, will not stand in the way of the Transport Authority suspending the permit where it is satisfied that there had been such overloading. 1955 Mad 176 (176) [(S) A I R V 42 C 44] : I L R (1955) Mad 1035 : 1955 Cri L Jour 356 (DB).

[10] An order of the R. T. A. suspending a permit on the ground that the permit-holder has contravened two of its conditions cannot be sustained where it is found that in respect of one of the conditions there was no such contravention at all. 1958 All 575 (578) [A I R V 45 C 144] : 1958 Cri L Jour 984 (DB).

[11] A suspension order which is stayed during the pendency of the appeal can be given effect to after the disposal of the appeal, subject to the decision therein. It does not become infructuous and unenforceable because of the expiry of the date fixed in the order for the commencement of the punishment before the decision in the appeal and the failure of the appellate order to contain any fresh direction as to the date of such commencement. The effect of the stay is to vacate from the order of suspension the direction relating to the date and the dismissal of the appeal leaves the punishment without any direction as to the date of its commencement. 1958 Ker 109 (110) [A I R V 45 C 43] : I L R (1958) Ker 59 (DB) \* 1957 Ker 142 (143) [A I R V 44 C 76]. (Stay of suspension order pending appeal — High Court will not restrain by a writ of prohibition the transport authority from giving effect to order of suspension after removal of stay.)

[12] Section 60 confers on the Transport Authority a duty to exercise its discretion in cancelling or suspending a permit, having regard to the facts of each case. If the Authority suspends a permit and it cannot be said that in doing so they had not discharged their duty or had acted without jurisdiction or unreasonably, the High Court will not interfere with that order in a writ petition merely because it is of the view that a mere warning would have sufficed in the case. The Court will interfere only if the discretion had been exercised mala fide or capriciously or by taking into consideration extraneous circumstances. 1957 Andh Pra 882 (885) [A I R V 44 C 271] : ILR (1956) Andh 591 (DB).

[13] Where the R. T. A. rejected the statements made before it by certain respectable witnesses without giving any reasons for the rejection and without even recording those statements and suspended a permit for overloading relying on the police report it was held that the R. T. A. erred in giving its judgment relying on that report alone and therefore its order should be quashed by a writ of certiorari. 1957 And Pra 608 (609) [A I R V 44 C 202].

**6. Compounding contraventions.** —

[1] Rule 84 of the Assam Motor Vehicles Rules permits the Transport Authorities to allow a permit-holder to retain his permit, which has

**61. Transfer of permit on death of holder.**

(1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it had been granted to himself :

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit :

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(2) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit.

**SECTION 61A****STATE AMENDMENT****BIHAR**

In its application to the State of Bihar, after section 61 *insert* the following section, namely,—

"61A. *Transfer of permit to a joint stock company.*—Notwithstanding anything contained in section 59 or 61, the holder of a permit may, without the permission of any transport authority, transfer his permit to a joint stock company referred to in subsection (1) of section 66A."

—Bih. Act XXVII of 1950, S. 11 [21-7-1950].

**62. Temporary permits.**

\*[\* \* \*] A Regional Transport Authority may [\* \* \*] without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily—

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, "or]

\*[(d) pending decision on an application for the renewal of a permit,] and may attach to any such permit any condition it thinks fit :

**Section 60 — Note 6 (contd.)**

become liable to cancellation or suspension under Cl. (b), on the payment of the composition fee assessed by them. So long as a party does not challenge that rule as *ultra vires*, he cannot object to the imposition of fine as composition fee and claim that the violation of the rules or conditions can be dealt with only by a prosecution launched under chapter 9 of the Act. 1954 Assam 155 (156) : [AIR V 41 C 47] : 1954 Cri L Jour 1180 (DB).

7. Order under section can be delivered orally. — [1] There is nothing in the Motor Vehicles Act or the rules framed thereunder making provision for the delivery of the appellate orders. All that S. 60 (2) requires is that the Transport Authority which cancels or suspends a permit shall give to the holder in writing its reasons for doing so. Neither R. 73 nor S. 60 (2) prohibits the Appellate Authority from delivering the order orally and recording the reasons subsequently. 1958 Madh Pra 9 (10) [A I R V 45 C 8] \* 1957 Nag 102 (104) [AIR V 44 C 37].

**Section 61 — Note 1**

[1] A mere application for permit confers no right on the applicant which is either herit-

able or transferable. 1957 All 471 (472) [AIR V 44 C 148]. (Applicant dying pending his appeal against the refusal of permit to him. Son has no claim for being substituted in the appeal.)

**SECTION 62—SYNOPSIS**

1. Scope.
2. Temporary need.
3. Successive grants of temporary permits.
4. Proviso (1).
5. Remedies of person aggrieved by the grant of permit.

1. Scope.—[1] The power of issuing permits under S. 62 is not an uncontrolled or unrestricted one. Inasmuch as the section has excluded the applicability of S. 57 only and not of Ss. 55 and 56 the power is intended by the legislature to be used on the basis indicated by those two sections. 1959 Punj 1 (8) [AIR V 46 C 1] : ILR (1958) Punj 1590 (FB).

[2] It is open to the R. T. A. to grant a temporary permit only for one of the reasons enumerated in the section and practice of granting them for reasons other than the specified ones is clearly irregular. 1951 All 257 (288) [AIR V 38 C 51] : ILR (1951) 1 All

[Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under section 46 or section 54 during the pendency of the application :

Provided further that a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal.]

d[\* \* \* \* \*].  
[a] The brackets and figure "(1)" were omitted by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 14 [3-4-1942]. [b] The words "at its discretion, and" were omitted, *ibid*, 1956 (C of 1956), S. 55 [w. e. f. 16-2-1957]. [c] *Inserted, ibid.* [d] Sub-section (2) was omitted by Act XX of 1942, S. 14 [3-4-1942].

### OBJECTS AND REASONS

*Amendments made in 1956.*—The new sub-clause (d) provides that a temporary permit may also be granted pending the decision on an application for the renewal of a permit, which is sometimes subject to delay. The

Provisos added to the section will have the effect of overriding the amendments made by the State Governments to section 62 of the Act.

—S. O. R.

### STATE AMENDMENTS

#### MADHYA PRADESH

**MAHAKOSHAL.**—In its application to the Mahakoshal region of the Madhya Pradesh, in section 62 after the words "Regional Transport Authority" insert the words "or the State Transport Authority on the issue of a direction under the Proviso to section 45".

—C. P. & Berar Act III of 1948, S. 7 [16-1-1948].

#### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 62 after the words "Regional Transport Authority" insert the words "or the State Transport Authority".

—Bom. Act VII of 1947, S. 12 [23-3-1947].

**VIDARBHA.**—The amendment made in section 62 by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.

#### Section 62 — Note 1 (contd.)

269 (FB)\* 1959 Mys 226 (227) [A I R V 46 C 90] : ILR (1958) Mys 895\* 1948 Mad 400 (402) [AIR V 35 C 197] (DB).

[3] A temporary permit granted by the authority, without applying its mind to the question whether one or the other of the circumstances mentioned in the section is present, on an application which is not in the prescribed form, and which also does not state any reason for the grant of the permit, cannot be sustained. 1959 Mys 226 (227) [AIR V 46 C 90] : ILR (1958) Mys 895.

[4] A disregard of the provisions of S. 57 can be justified under S. 62 only where the application itself had been made for the grant of a temporary permit. If the application is not for such a permit the authority cannot invoke S. 62 to avoid the procedure laid down in S. 57 even for granting a temporary permit on that application. 1959 Tripura 35 (37) [AIR V 46 C 14]\* 1948 Mad 400 (408) [A I R V 35 C 197] (DB). (Applications for renewal summarily refused without following the procedure under S. 57 and temporary permits granted to applicant — *Held* the procedure adopted was wrongful and illegal.)

[5] The fact that the permits granted under S. 62 will be effective for a limited period cannot mean that they are not permits as defined in S. 2 (20). The section does not provide for any new kind of permits which have not been provided for in the previous sections. Hence the State Transport Commissioner who

has been authorised to exercise the powers of a R. T. A. and grant public carriers' permits can issue such permits permanently as well as for a temporary period. 1959 Punj 1 (7) [AIR V 46 C 1] : ILR (1958) Punj 1590 (FB).

[6] When the R. T. A. invites applications specifically for the issue of temporary permits under S. 62 of the Act, there is no obligation upon it to treat any application as an application under S. 58 of the Act. 1953 Assam 74 (76) [AIR V 40 C 31] : ILR (1952) 4 Assam 9 (DB).

**2. Temporary need.** — [1] Temporary need, contemplated by sub-s. (c) of S. 62 cannot be that of the owner to whom the stage carriage permit has been granted or of bus owners similarly situated, but of the travelling public. 1957 Trav-Co 255 (256) [AIR V 44 C 96]\* 1954 Raj 33 (34) [AIR V 41 C 14] : ILR (1953) 3 Raj 215 (DB). (The demand of the bus owners to ply more of their buses is not a demand of the public and hence cannot come under the scope of S. 62.)\* 1948 Mad 400 (408) [AIR V 35 C 197] (DB). (Case decided before the amendment of section—Nationalisation of bus transport — Government unable to secure buses immediately directing the summary refusal of applications for renewals and issue of temporary permits — Issue of temporary permits was held to be solely in the interest of the Government inasmuch as it was done to avoid public criticism which would otherwise have emanated due to the absence of transport facilities.)

**WEST BENGAL**

In its application to the State of West Bengal, the amendment made in section 62 is the same as that made in Maharashtra. —W. B. Act XIX of 1951, S. 13 (i) [13-7-1951].

**Note.**—The following are the additional amendments made in section 62 by the State Governments. It seems that the Provisos *added* to the section by the Central Act C of 1956 have the effect of overriding these amendments (*see* the extract reproduced above from the Statement of Objects and Reasons). These amendments are, however, given for information.

**ANDHRA PRADESH**

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, after clause (c) of section 62 *add* the following, namely,—

"or

- (d) in such circumstances as may, in the opinion of such Authority, justify the grants of such permits," —Mad. Act XX of 1948, S. 11 [21-12-1948].

**BIHAR**

In its application to the State of Bihar, the amendment made in section 62 is the same as the one given under Andhra Pradesh. —Bih. Act XXVII of 1950, S. 12 [21-7-1950].

**MADHYA PRADESH**

**MAHAKOSHAL.**—In its application to the Mahakoshal region of the State of Madhya Pradesh, after clause (c) of section 62 *add* the following, namely,—

"or

- (d) pending decision on an application for the grant or renewal of a permit," —C. P. & Berar Act III of 1948, S. 11 [16-1-1948].

**MADRAS**

In its application to the pre-reorganised State of Madras, excluding the transferred territories, the amendment made in section 62 is the same as the one given under Andhra Pradesh.

—Mad Act XX of 1948, S. 11 [21-12-1948].

**MAHARASHTRA**

In its application to Bombay and Vidarbha areas of the State of Maharashtra the amendment made in section 62 is the same as the one given under Madhya Pradesh.

—Bom. Act VII of 1947, S. 12 [23-3-1947].

**PUNJAB**

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, the amendment made in section 62 is the same as the one given under Andhra Pradesh.

—E. P. Act XXVIII of 1948, S. 10 [12-7-1948].

**WEST BENGAL**

In its application to the State of West Bengal, the amendment made in section 62 is the same as the one given under Madhya Pradesh.

—W. B. Act XIX of 1951, S. 13 (ii) [13-7-1951].

**Section 62 — Note 2 (contd.)**

[2] 'A temporary need' to fall within clause (c) must be 'a particular need.' 1952 Nag 353 (355) [AIR V 39]; ILR (1953) Nag 110.

[3] A shortage in the necessary number of vehicles on a route can create a temporary need until a regular permit could be granted by the R. T. A. after going through the procedure laid down under S. 57. In such a case the R. T. A. can provide for the temporary need by granting temporary permits. (1957) ILR (1957) 7 Raj 727 (734)\* 1957 Raj 162 (163) [AIR V 44 C 63]; ILR (1958) 6 Raj 1053 (DB). (Shortage in vehicles plying on a route due to cancellation of permanent permit—R. T. A. can grant temporary permits successively till a regular permit can be granted after observing necessary formalities—But that power can be exercised only for that purpose and not to avoid a compliance with the provisions of S. 57—AIR 1954 Raj 33 and AIR 1954 Raj 78, *Explained and Hel. on.*)

[See also 1954 Raj 33 (34) [AIR V 41 C 14]; I L R (1953) 3 Raj 215 (DB). (There may be a shortage in the number of buses plying on a route but it cannot be said that the R. T. A. had acted on the existence of that circum-

stance unless it had applied its mind to that in granting temporary permit.)]

[4] When it is really a permanent need to have a permanent bus service on a particular route, the grant of temporary permit is without jurisdiction, more so, when no application for renewal of a permit is pending. 1959 Mys 114 (115) [AIR V 48 C 45] (DB).

[5] Where the need for the issue of permanent permit for plying motor service on the route was admitted, issue of a temporary permit until the issue of permanent permit and the finalisation of the scheme under Chap. IV-A, does not amount to issue of a temporary permit 'to meet a particular temporary need' within the meaning of cl. (c) of S. 62 and is therefore illegal. 1958 Ker 144 (146) [AIR V 45 C 56]; ILR (1958) Ker 381 (DB).

[See also 1948 Mad 400 (408) [AIR V 35 C 197] (DB). (Application for renewal of permits—Government intending to ply its own buses for hire granting temporary permit to applicant until such time when it could secure buses—*Held* the grant of the temporary permit was improper if having been done solely for the benefit of the Government.)]

**Section 62 — Note 2 (contd.)**

[But see 1953 Assam 74 (76) [AIR V 40 C 31] : ILR (1952) 4 Assam 9 (DB). (Temporary permits can be granted pending nationalisation of the Motor Transport which is delayed by inability of the Government to provide immediately transport. Such a situation can amount to a "temporary need" under cl. (c).)]

[6] When the additional passenger buses are to regularly ply on certain routes, it can rightly be inferred that the need proved to the satisfaction of the Transport Authority is of a permanent nature and not a temporary one. An order of the trial Court for the issue of temporary permits only in such a case would be in direct contravention of S. 62 and will be liable to be set aside. 1956 Bhopal 49 (52) [AIR V 43 C 26] \* 1954 Raj 33 (34) [AIR V 41 C 14] : ILR (1953) 3 Raj 215 (DB). (The fact there is more traffic on the routes than could be met by the stage carriages of existing permit-holders cannot be said to be temporary in its character.)

[7] A permanent need cannot become a temporary one within the meaning of S. 62 merely because an order granting a permit has been set aside or its operation stayed in other proceedings. 1960 Ker 239 (240) [AIR V 47 C 116] \* (58) 1958 Ker L T 1034 (1035) \* 1957 Trav-Co 255 (256) [AIR V 44 C 96].

**3. Successive grants of temporary permits.**—[1] The section authorises the grant of temporary permit co-terminous with the temporary need and not extending beyond the cessation or satisfaction of that need. 1957 Trav-Co 288 (289) [AIR V 44 C 115].

[2] A temporary need may be of a duration of four months or less or even of a duration longer than four months. 1957 Ker 13 (14) [AIR V 44 C 7].

[3] Temporary permits can be issued one after another so long as the temporary need persists and provided they are not issued for more than four months on each time. The fact that the total period of the two permits so issued exceed four months does not invalidate the second permit. 1957 Raj 162 (163) [AIR V 44 C 63] : ILR (1956) 6 Raj 1053 (DB). (The words "in any case" mean "at any one time" and not "in any circumstances.") \* 1957 Ker 13 (14) [AIR V 44 C 7].

[4] An order granting a temporary permit for an indefinite period is not legal. 1957 Raj 162 (163) [AIR V 44 C 63] : ILR (1956) 6 Raj 1053 (DB).

**4. Proviso (1).**—[1] The main object of the first proviso to S. 62 is to prevent nepotism and undue favour to one of the applicants to the disadvantage of other applicants. Hence the restriction contained in it cannot be regarded as unreasonable. 1959 Pat 248 (249) [AIR V 46 C 66] : 38 Pat 281.

[2] The provisions of the first proviso to section 62 are mandatory, and the Regional Transport Authority has no power to grant temporary permits in any case during the pendency of the application for the grant of new permits under S. 46 or S. 54. 1959 Pat 248 (249) [AIR V 46 C 66] : 38 Pat 281.

[3] For the applicability of Proviso to S. 62,

it must be established that the applications for the grant of new permits under S. 46 were pending at the time the temporary permits were granted. 1958 Ker 140 (141) [AIR V 45 C 54].

[4] Pendency is the state or condition of being undecided and the pendency of the applications should end with their determination by the Regional Transport Authority. The words 'during the pendency of the application' in proviso to S. 62 cannot include any period of time subsequent to the disposal of the application by the Regional Transport Authority. 1958 Ker 140 (142) [AIR V 45 C 54].

[5] For the applicability of the proviso to S. 62, the application should be pending before the R. T. A., and not in appeal before the Appellate Authority. Therefore, where the R. T. A. is satisfied that there should be additional facilities for the convenience of the public during the disposal of the appeal before the State Transport Appellate Tribunal against the order of the R. T. A., granting permanent permit, the grant of temporary permit by R. T. A., under S. 62 (d) during that period is justified. 1959 Ker 398 (400) [AIR V 46 C 143].

[6] To attract the prohibition contained in the first proviso it is not necessary that the pending application should be by the very person to whom the permit is granted or that the application must be one made after the proviso came into force. 1958 Ker 19 (22) [AIR V 45 C 7] \* 1958 Raj 176 (179) [AIR V 45 C 58] : ILR (1958) 8 Raj 624 (DB).

**5. Remedies of person aggrieved by the grant of permit.**—[1] An appeal lies under S. 64 against an order granting a temporary permit. 1959 Raj 119 (120) [AIR V 46 C 45] : ILR (1959) 9 Raj 144 (DB) \* 1959 Pat 111 (111) [AIR V 46 C 26] (DB). (Appeal against the grant of a temporary permit by an appellant is not incompetent on the ground that he did not object to its grant under S. 57.)

[2] Though the power to grant a temporary permit is discretionary a permit issued in exercise of that power by the authority acting illegally or with material irregularity can be quashed by a writ of certiorari. 1954 Raj 33 (35) [AIR V 41 C 14] : ILR (1953) 3 Raj 215 (DB).

[3] A temporary permit granted in disregard of the mandatory requirements of the section can be quashed by the High Court by a writ of certiorari. 1959 Tripura 35 (37) [AIR V 46 C 14] \* 1960 Ker 33 (37) [AIR V 47 C 12] : ILR (1959) Ker 1224. (The fact that the petitioner could have sought remedy in an appeal under S. 64 of the Act is no bar.) \* 1959 Mys 120 (121) [AIR V 46 C 49] (DB). (Temporary permit granted without considering the question whether the circumstances specified by the section exist can be quashed under Art. 226 even if the petitioner approaches the Court without exhausting the remedies open to him under the Act.) \* 1954 Raj 78 (79, 80) [AIR V 41 C 31] : ILR (1953) 3 Raj 250 (DB). (Where the R. T. A., has given a finding as to the existence of a temporary need the High Court will not examine the correctness of it as

**63. Validation of permits for use outside region in which granted.**

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned :

\*[Provided that a private carrier's permit, granted by the Regional Transport Authority of any one region with the approval of the State Transport Authority, for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned.]

(2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits:

\*[Provided that it shall not be necessary to follow the procedure laid down in section 57 for the grant of counter-signatures of permits, where the permits granted in any one State are required to be counter-signed by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States.]

(4) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under

**Section 62 — Note 5 (contd.)**

a Court of appeal and interfere with the permit granted by the R. T. A.)

**Section 63 — Note 1**

[1] Section 63 does give power to the R.T.B. to grant permits for routes outside the State or to vary the conditions of an existing permit so as to permit the running of buses outside the State. 1960 Ker 18 (21) [AIR V 47 C 7].

[2] An inter-regional route can be established only in accordance with the provisions of S. 63 or by a decision of a joint conference held under the Bengal Motor Vehicles Rules. The appellate sub-committee of a State Transport Authority has no power to inaugurate or establish an inter-regional route either under the Act or under the Bengal Motor Vehicles Rules. 1957 Cal 188 (189) [AIR V 44 C 58]. (Hence an order of the sub-committee directing the Regional Transport Authorities to issue permits in an inter-regional route was set aside.)

[3] Under S. 63, the countersigning Regional Authority has jurisdiction to reduce the validity of the period of licence so far as his region is concerned. 1955 N U C (Raj) 5740 [AIR V 42].

[4] The law requires a Regional Transport Authority to consider each case upon its merits before he affixes his counter signature to a permit under this section. The counter-signatures are not to be made as a purely formal affair. 1960 All 228 (229) [AIR V 47 C 49].

[5] The system of counter-signatures of one

State on permits issued by another State could only work if the two States had already agreed to treat a particular route as a joint route and a part of the said route lay in one State and the other part lay in the other State. Hence a Regional Transport Authority is justified in refusing to counter-sign a permit where the route in question has not been made a joint route by agreement between the two States. 1960 Punj 181 (182) [AIR V 47 C 63].

[6] A permit granted by the Regional Transport Authority of one region and which has not been counter-signed by the Regional Transport Authority of another region in accordance with the requirements of this section is not a valid permit in the latter region. Therefore neither the increased fee under R. 55 of the U. P. Motor Vehicles Rules of 1940 can be required on that permit on the basis of its being an inter-regional permit nor the permit-holder compelled under R. 31A to pay such fee. 1960 All 228 (229, 230) [AIR V 47 C 49].

[7] Section 63 of the Motor Vehicles Act in terms applies to all Regional Transport Authorities without qualification and any person who is aggrieved by the refusal of a State Regional Transport Authority to countersign a permit under that section has got a right of appeal to the State Transport Appellate Tribunal under S. 64 of the Act. Where such a right of appeal exists, the State Transport Authority cannot entertain a revision under S. 64A of the Act in regard to a refusal of a Regional Transport Authority to countersign a permit. ('58) 1958-2 Mad L Jour 800 (804).



clause (a) or clause (c) of sub-section (1) of section 62 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

<sup>a</sup>[(5) A State Government may, by rules made under section 68, specify the conditions subject to which a document issued by a competent authority in the State of Jammu and Kashmir authorising the use of a motor vehicle as a transport vehicle may be deemed for the purposes of sub-section (1) to be a permit granted under this Chapter in the State.

(6) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act, the Regional Transport Authority of any one region may, for the convenience of the public, grant a special permit in relation to a public service vehicle for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the counter-signature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.]

[a] Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 56 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

*Amendments made in 1956.*—Sub-section (1), Proviso — “Under the existing provisions, the owner of a private carrier has to obtain a permit from a Regional Transport Authority if he plies the vehicles in another region. In States in which the administrative districts constitute regions for the purposes of the Act, this involves obtaining counter-signature even for moving from one district to another. This means a considerable restriction on the private carrier. The object of these provisions was to ensure road-rail co-ordination and the prevention of deterioration of road system. In principle, there is no great justification for denying to the private lorry owner the freedom that is enjoyed by the owner of a private motor car. It is, therefore, proposed to provide that a permit issued by a Regional Transport Authority, with the approval of the State Transport Authority, for a private carrier shall be valid throughout that State.” The Proviso to sub-section (1) makes the necessary provision.

Sub-section (3), Proviso—“Under the existing provisions, the procedure prescribed for

the grant of a permit has to be gone through even for obtaining counter-signature of permits originally granted in a neighbouring State. This is unnecessary and hampers the free flow of inter-State traffic. Counter-signature of permits granted in a State as a result of reciprocal agreement arrived at between two States should be only a formality.” The proviso to sub-section (3) makes provision in this behalf.

Sub-section (5) — There is at present no provision in section 63 whereby permits issued by the Government of Jammu and Kashmir can be accepted as valid in India. [Sub-section (5)] makes such a provision and is mainly designed to facilitate reciprocal arrangements for regular services and/or occasional visits of buses used as contract carriages and motor cabs between places in India and the State of Jammu and Kashmir.”

Sub-section (6) — This sub-section “is intended for the convenience of the public, who wish to travel unhampered from one State to another.”

— S. O. R.

### STATE AMENDMENTS

#### MADHYA PRADESH

**MAHAKOSHAL** — In its application to the Mahakoshal region of the Madhya Pradesh, after sub-section (4) of section 63 insert the following sub-section, namely,—

“(5) In regard to permits of the class and for the region specified in the notification issued under the Proviso to section 45, the powers conferred on a Regional Transport Authority by sub-sections (1) to (4) shall be exercised by the State Transport Authority to the exclusion of any Regional Transport Authority.”

—C. P. & Berar Act III of 1948, S. 12 [16-1-1948].

#### MAHARASHTRA

**VIDARBHA** — The amendment made in section 63 by C. P. & Berar Act III of 1948 and given under Madhya Pradesh applies to the Vidarbha area of the State of Maharashtra.



**\*[63A. Inter-State Transport Commission.**

(1) The Central Government may, by notification in the Official Gazette, constitute an Inter-State Transport Commission consisting of a Chairman and such other members, not being less than two, as it thinks fit to appoint for the purpose of developing, co-ordinating and regulating the operation of transport vehicles in respect of any area or route common to two or more States (hereinafter referred to as inter-State region) and performing such other functions as may be prescribed under section 63C.

(2) The commission shall perform throughout an inter-State region all or such of the following functions as it may be authorised to do by the Central Government by notification in the Official Gazette, namely :—

- (a) to prepare schemes for the development, co-ordination or regulation of the operation of transport vehicles and in particular of goods vehicles in an inter-State region;
- (b) to settle all disputes and decide all matters on which differences of opinion arise in connection with the development, co-ordination or regulation of the operation of transport vehicles in an inter-State region;
- (c) to issue directions to the State Transport Authorities or Regional Transport Authorities interested regarding the grant, revocation and suspension of permits and of counter-signatures of permits for the operation of transport vehicles in respect of any route or area common to two or more States;
- (d) to grant, revoke or suspend any permit or countersign any permit for the operation of any transport vehicle in respect of such route or area common to two or more States as may be specified in this behalf by the Central Government;
- (e) to perform such other functions as may be prescribed by the Central Government under section 63C.

(3) For the purpose of assisting the Commission in the performance of its functions in relation to any area or route common to two or more States, the Commission shall associate with itself for such purposes as may be determined by rules made under section 63C, a representative of each of the Governments interested, who shall be chosen by the Government concerned; and a person so associated shall have the right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Commission and shall not be a member of the Commission for any other purpose.

(4) Where the Commission, in the exercise and discharge of its powers and functions under clause (c) of sub-section (2), issues directions to any State Transport Authority or Regional Transport Authority interested, the State Transport Authority or the Regional Transport Authority, as the case may be, shall give effect to, and be guided by, such directions.

(5) Where, by a notification issued by the Central Government, the Commission is authorised to perform the functions specified in clause (d) of sub-section (2) in respect of any route or area common to two or more States, then, on the issue of such a notification—

- (a) the Regional Transport Authorities or State Transport Authorities interested shall cease to exercise and discharge any powers and functions in respect of such route or area;
- (b) the powers and functions of the Regional Transport Authorities and State Transport Authorities interested in respect of such route or area shall be exercised and discharged by the Commission; and any permit granted or countersigned by the Commission for any such route or area shall be valid for that route or area, notwithstanding anything contained in this Chapter;

- (c) subject to any rules that may be made under section 63C, the provisions of this Chapter relating to the grant, revocation and suspension of permits and of counter-signatures of permits by a State Transport Authority or Regional Transport Authority shall, as far as may be, apply to the grant, revocation and suspension of permits and of counter-signatures of permits by the Commission;
- (d) any permit granted in respect of any such route or area before the issue of the notification shall, notwithstanding such issue, continue to be effective for the period specified in the permit and shall be deemed to have been granted by the Commission under this section as if this section were in force on the day on which the permit was granted.
- (6) Nothing in this section shall be construed to preclude the State Transport Authority or any Regional Transport Authority in a State from exercising and discharging its powers and functions in respect of any route or area in the inter-State region which lies wholly within that State.
- (7) For the purposes of this section the expression "Governments interested", "State Transport Authorities interested" or "Regional Transport Authorities interested", in relation to the Commission, means the Governments of such States, such State Transport Authorities or such Regional Transport Authorities, as the case may be, as are likely to be interested in, or affected by the functioning of the Commission under this section.]

[a] Sections 63-A, 63-B and 63-C were inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 57 [w. e. f. 16-2-1957].

#### OBJECTS AND REASONS

"At present there is no proper regulation of inter-State operation of transport vehicles. Section 63 provides that a permit granted in one State shall not be valid in another State unless counter-signed. Though some of the State Governments have entered into mutual agreements permitting the operation of a specified number of vehicles on inter-State routes, there are several routes relating to which no agreement exists. On many of such inter-State routes, passengers and goods have to be transferred to other vehicles at inter-State borders. The negotiation for inter-State agreements in this matter have been of a prolonged character and, in many cases, inconclusive. In the public interest, it has become necessary to set up some agencies controlled by the Central Government to regulate the inter-State operation of transport vehicles . . ."

— S. O. R.

"The Committee consider that instead of two separate authorities, namely, the inter-State Transport Authority and the Central Transport Authority, there need be only one authority, namely, an Inter-State Transport Commission appointed by the Central Government for the purpose of developing, co-ordinating and regulating the operation of transport vehicles in respect of areas or routes common to two or more States. The Committee consider that such a Commission should be empowered to associate with itself representatives of the concerned State Governments as and when necessary. The Committee also feel that the Commission should be empowered to delegate its powers and functions to the Chairman or any member thereof."

— J. C. R.

#### \*[63B. Delegation of powers, etc.

(1) The Commission may, by general or special order in writing, delegate to the Chairman or any other member, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under sub-section (2) of section 63A as it may deem necessary for the efficient discharge of its functions.

(2) All orders, decisions and other instruments issued by the Commission shall be authenticated by the signature of the Chairman or any other member or any officer of the Commission authorised by the Commission in this behalf.]

[a] See Foot-note (a) under S. 63-A.

#### \*[63C. Power of Central Government to make rules.

The Central Government may make rules to provide for all or any of the following matters, namely :—

- (a) the period of appointment and the terms of appointment of the members of the Commission, the manner of filling vacancies among members, the

conduct of business by the Commission and the reports to be furnished by it ;

- (b) the powers and functions of the Commission ;
- (c) the purposes for which representatives of the State Governments may be associated with the Commission under sub-section (3) of section 63A ;
- (d) the form and manner in which an application for a permit or counter-signature of a permit may be made ;
- (e) the fees, if any, to be levied by the Commission ;
- (f) the procedure to be followed in considering an application for a permit or counter-signature of a permit ;
- (g) the grant of a permit and the counter-signature of a permit and the conditions which may be attached to a permit ;
- (h) the authority to which, the time within which and the manner in which, an appeal against the decision of the Commission may be preferred ;
- (i) any other matter which has to be, or may be, prescribed.]

[a] See Foot-note (a) under S. 63-A.

## 64. Appeals.

Any person—

- (a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or
- (b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

### SECTION 64 — SYNOPSIS

1. Scope.
2. Revision of orders not appealable under section—Madras amendment.
3. Prescribed authority.
4. Appeals under cl. (a).
5. Appeals under cl. (b).
6. Appeals under cl. (c).
7. Appeals under cl. (f).
8. Opportunity of being heard.
9. Procedure in appeals.
10. Limitation.
11. Remedies against appellate orders.

1. Scope. — [1] It is not competent to the civil Court to determine whether the permits issued are good permits or not. That question can only be determined by the appellate tribunal, the prescribed authority mentioned in S. 64. 1945 Cal 260 (263, 264) [AIR V 32] : ILR (1944) 1 Cal 631 (DB).

[2] An order of the Regional Transport Authority refusing a permit cannot be challenged by a proceeding for a writ of certiorari under Art. 226. The proper remedy is an appeal under this section and therefore 'the application which is made without having recourse to that remedy must be dismissed in limine. 1955 Mad 205 (206) [(S) AIR V 42 C 51] (DB) + 1956 Raj 65 (67) [(S) AIR V 43 C 24] : ILR (1956) 6 Raj 110 (DB).

[3] Where an appeal is pending before the Appellate tribunal and the subject-matter of the appeal is within the jurisdiction of that tribunal the High Court will refuse, on an application under Art. 226 of the Constitution,

to interpose its decision on a point which is under consideration in the appeal and grant relief to the parties. 1958 Raj 165 (166) [AIR V 45 C 53] : ILR (1957) 7 Raj 1025 (DB).

[4] Where a party would be considerably prejudiced if he were to prefer an appeal under this section and wait for the decision, he can seek relief from the order of the Regional Transport Authority through an application to the High Court under Art. 226 of the Constitution. In such a case the appeal being not an adequate remedy cannot bar the application on the ground of the availability of an alternative remedy. 1956 All 594 (596) [AIR V 43 C 197].

[5] Where the transport authorities have granted permits without complying with the procedure laid down by Ss. 57 and 47 the persons who have been refused permits can seek relief under Art. 226 of the Constitution even without filing appeals under this section. 1960 Manipur 36 (40, 43) [AIR V 47 C 10].

[6] An applicant for permit, whose appeal against the order of the Regional Transport Authority refusing him the permit has been dismissed, cannot challenge the order of the Regional Transport Authority by an application under Art. 226 of the Constitution. After the appeal he can challenge only the order of the appellate authority. 1957 Cal 638 (643, 644) [(S) AIR V 44 C 165] : ILR (1958) 1 Cal 486.

[7] An appeal against an order of the Regional Transport Authority rejecting an application for review of its original order does not lie because the Regional Transport Authority has no power to review its orders. Nor could the appeal against the order rejecting the review be treated as an appeal against

- (c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or
  - (d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or
  - (e) aggrieved by the refusal of renewal of a permit, or
  - (f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or
  - \*[(g) aggrieved by the refusal to grant permission under sub-section (1), or sub-section (2) of section 59, or
  - (h) aggrieved by a reduction under sub-section (14) of section 60 in the number of vehicles or routes or area covered by a permit, or
  - (i) aggrieved by any other order which may be prescribed,]
- may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

[a] Substituted for clause (g), by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 58 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

Clauses (g), (h) and (i) — The amendment in section 64 is intended to remedy an apparent omission to provide for an appeal against the refusal to allow transfer of a permit under

section 59 (1) or replacement of a vehicle under section 59 (2) . . . . . Provision for appeals against orders not already covered is also necessary." —S. O. R.

#### Section 64 — Note 1 (contd.)

the original order itself where on the date on which it was filed an appeal against the original order had already become time-barred. 1957 Pat 117 (119, 120) [AIR V 44 C 37] : 35 Pat 802 (DB).

[8] The appellate sub-committee of a State Transport Authority hearing appeals under the section cannot establish or create inter-regional routes. Inter-regional routes can be established only in accordance with the provisions of S. 63 or according to the rules framed in that behalf by the Regional Transport Authorities themselves. 1957 Cal 186 (189) [AIR V 44 C 58].

**2. Revision of orders not appealable under section — Madras amendment.** — [1] Under sub-s. (2) added to this section revisional power vests in the authority appointed to hear appeals automatically on such appointment. It does not require the conferment of that power by the State Government. 1958 Ker 19 (22) [AIR V 45 C 7].

[2] Sub-section (2) added to this section by Madras Act 39 of 1954 is not repugnant to S. 64A inserted newly into the Act by the Central Act 100 of 1956. Hence it is not void under Art. 254 (1) of the Constitution. 1958 Ker 19 (21) [AIR V 45 C 7].

**3. Prescribed authority.**—[1] An appellate board presided over by a person who was not appointed to it either under the Rules framed by the government or by any notification published in the official Gazette under S. 44 of the Act is not a validly constituted appellate authority. Therefore any decision given by it in an appeal would stand vitiated by a total lack of jurisdiction. 1953 Raj 193

(197) [AIR V 40 C 68] : ILR (1953) 3 Raj 13 (DB).

[2] Rule 80 of the Madhya Bharat Motor Vehicle Rules, 1949, disqualifies a person who has financial interest in a transport undertaking from being made a member of the appellate authority. 1952 Madh-B 128 (129) [AIR V 39] (DB).

[3] An amendment of the Rules under the Act effecting a change in the forum of appeal cannot, unless it has been expressly made retrospective in its operation, oust the jurisdiction of the existing forum over pending appeals and confer jurisdiction on the new forum to hear and decide them. (1955) 59 Cal W N 256 (259).

**4. Appeals under cl. (a).**—[1] A non-applicant for permit has no locus standi under cl. (a) to appeal against an order of the Regional Transport Authority granting a permit to another. 1959 Pat 393 (395) [AIR V 46 C 109] (DB).

[2] No appeal lies under cl. (a) against an order granting a temporary permit. 1958 Ker 19 (22) [AIR V 45 C 7].

[3] The appeal against the refusal to grant a permit abates on the death of the appellant and the appellant's son has no claim to be substituted in his place as the appellant. 1957 All 471 (472) [AIR V 44 C 148] (DB).

#### Appeal relating to conditions

[4] Clause (a) of S. 64 applies only to cases where by reason of the existence of a condition attached to a permit the grantee of the permit was aggrieved by that condition at the time of the grant of the permit. It is not a grievance which accrued or which arose subsequent to the grant of the permit, that can be agitated in an

# STATE AMENDMENTS

## MADRAS

In its application to the pre-reorganised State of Madras, excluding the transferred territories, section 64 shall be *renumbered* as sub-section (1) of that section and after sub-section (1) so renumbered *add* the following sub-section, namely,—

“(2) The authority prescribed under sub-section (1) for the purpose of hearing appeals may, either of its own motion or on application made to it, call for the records of any Regional Transport Authority or the State Transport Authority, as the case may be, for the purpose of satisfying itself as to the legality, regularity or propriety of any order made by such Transport Authority against which no appeal is provided for under sub-section (1), and after examining such records, pass such orders in reference thereto as it thinks fit.”

—Madras Act XXXIX of 1954, S. 3.

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 64 (g) after the words, “Regional Transport Authority” wherever they occur the words “or the Provincial Transport Authority” shall be *inserted*.

—Bom. Acts VII of 1947, S. 8 [23-3-1947] and XXI of 1954, S. 3 & Sch II.

[Note — After the substitution of the new cl. (g) by the Central Act C of 1958, there is no scope left in that clause to incorporate the above amendment.]

## PUNJAB

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, after cl. (g) of section 64 *insert* the following clauses, namely,—

“(gg) aggrieved by an order of the State Transport Commissioner or Deputy State Transport Commissioner or any officer subordinate to them in exercise and discharge of such powers and functions with which they have been specifically authorised under section 44A.”

—Punj Act XXXI of 1955, S. 2 [27-12-1955].

“(h) Government may ask the Appellate Authority prescribed under the rules framed under this section to forward for its consideration any of the appeals decided by the Appellate Authority and may alter, revise, cancel or uphold any such orders.”

—E. P. Act XXVIII of 1948, S. 11 [12-7-1948].

## Section 64 — Note 4 (contd.)

appeal. 1953 Mad 321 (322, 323) [A I R V 40 C 109] (DB) + 1959 Mys 12 (13) [A I R V 46 C 3] : ILR (1958) Mys 175 (DB). (Refusal to alter condition of permit — No appeal lies under cl. (a).)

[5] The time fixed by the R. T. A. at the time of granting a permit for a stage carriage is not a condition of the permit and hence there is no right of appeal under S. 64 against the order fixing the time. 1959 Pat 580 (582) [AIR V 46 C 164] (DB).

### *Refusal to grant a permit*

[6] The grant of a permit to one of the several applicants for the same amounts to a refusal of the permit to the other applicants. Hence those applicants have a right to appeal under the section as aggrieved persons even though no express order refusing the permit to them had been made by the Transport Authority. 1959 S C 851 (852, 853) [AIR V 46 C 117].

[7] An order renewing a permit on a route on which there is scope for granting a single permit only amounts to a refusal of the same to another applicant for the permit and hence is appealable at the instance of the unsuccessful applicant. 1955 Mad 386 (387) [(S) AIR V 42 C 103] : I L R (1956) Mad 24 (DB). (Hence the appellate authority commits an error relating to its jurisdiction in rejecting the appeal as not maintainable by holding that it is one against an order of renewal.)

[8] An omission on the part of the R. T. A. to pass any order at all on the application for a permit does not tantamount to a rejection of the application and hence no question of the applicant having a right to appeal under S. 64 can arise at all in the case. 1953 Raj 1

(3) [A I R V 40 C 1] : I L R (1952) 2 Raj 265 (DB). (In such circumstances there is no bar to the issue of a writ in the nature of a mandamus to the R. T. A. directing it to deal with the application in accordance with the law.)

[9] Where the R. T. A. before which there were pending applications for permit ordered the advertisement of the route to invite fresh applications and it was apparent from its order that its intention was to consider both applications together it was held that it was not a case of refusal of permits and hence there was no scope for an appeal under S. 64. 1960 Raj 105 (117) [A I R V 47 C 27] : I L R (1959) 9 Raj 869 (DB). (Hence the appellate authority commits a serious illegality relating to the exercise of its jurisdiction in hearing the appeal. Its order therefore is liable to be quashed by a writ of certiorari.)

[10] An intimation given by the R. T. A. to the applicants in advance, without considering their applications on merit, that it would not issue any but temporary permits and that those too would be liable to cancellation when the State is in a position to run its own buses does not amount to an order of refusal under the Act and therefore the applicants have no remedy by way of appeal under S. 64 against that decision. 1951 All 257 (264, 265) [AIR V 38 C 51] : ILR (1951) 1 All 269 (FB).

[11] The refusal to entertain an application for a permit on the ground that it is not in the proper form does not amount to an order refusing to grant a permit which is appealable under cl. (a). 1960 Mys 72 (72) [AIR V 47 C 17] (DB).

### *Powers of appellate authority in appeal under cl. (a) — Cancellation of permits.*

[12] In an appeal under cl. (a) the appellate

**Section 64 — Note 4 (contd.)**

authority has jurisdiction to set aside the orders of the R. T. A. granting permits to others as incidental to the relief granted to the appellant, whose application was in the opinion of the appellate authority improperly rejected. The appellate authority will have such jurisdiction irrespective of the fact that the appellant who had not filed any representation under S. 57 (3) does not come within the purview of cl. (f) of this section. 1960 Mys 11 (13) [AIR V 47 C 2] : ILR (1958) Mys 589 (DB) \* 1959 Assam 171 (173) [AIR V 46 C 37] (DB) \* 1956 Ajmer 41 (45) [AIR V 43 C 51].

[13] An appeal by an applicant against an order granting the permit to a rival applicant in preference to him is competent under clause (a). In such a case the appellant cannot be denied relief on the ground that he had not put in objections against the application of the competing applicant, at the time of the grant. That fact which would be material if the appeal is under cl. (f) has no relevance at all in appeals under the other clauses. Clause (f) is an independent provision which neither affects the right of appeal under the other clauses nor restricts the power of the appellate tribunal in granting all proper reliefs in those appeals. 1959 S C 851 (854) [AIR V 46 C 117]. (Observations in AIR 1955 Raj 19, not approved.) \* 1953 Mad 1 (3) [AIR V 40 C 1] : ILR (1953) Mad 367 (DB).

[14] The appellate authority necessarily possesses all powers to give the relief to which the appellant should be found entitled. If in order to give relief to the appellant it is necessary to cancel the permits granted to the respondents, it may do so, but it has no power to cancel the permit irrespective of the fact whether it is necessary to grant relief to the appellant or not and direct the R. T. A. to fill up the vacancy by inviting fresh applications. 1960 Assam 100 (103) [AIR V 47 C 28] (DB).

[15] In an appeal by an applicant whose application for permit is refused the Appellate Authority has to decide the matter judicially, whether on the materials on record, the respondent to appeal should not be entitled to the grant of a permit, he having an order of the Regional Transport Authority in his favour. And if the authority is inclined to cancel the permit of the respondent, then the suitability or otherwise of the claimants could not be judged unless the case of each claimant or grantee has been considered by the Appellate Authority. And the Appellate Authority in disposing of the appeal, is bound to take into consideration all these factors and then determine the appeal, as a quasi-judicial body should do. Its failure to do so will result in a decision which may not be in accordance with law and may be in excess of its jurisdiction. 1959 Assam 183 (188) [AIR V 46 C 40] : ILR (1957) 9 Assam 206 (DB).

[16] The appellate authority in dealing with an appeal against the refusal of permits is not restricted to the minutes of the proceedings of R. T. A. for ascertaining the reasons for the refusal. It is true that the minutes of the pro-

ceedings constitutes the primary document where one should look for these reasons but at the same time there is nothing to prevent the R. T. A. from supplementing the minutes by giving reasons in individual cases in the communications addressed to the applicants. Where it has done so the appellate authority has to consider not only the minutes of the proceedings but also the reason given in such individual communications. 1956 Cal 490 (493) [AIR V 43 C 142].

[17] In an appeal under cl. (a) the appellate authority can act only on the matters and objections which are on record having been brought on it at the time when the permit was granted by the R. T. A. It is not entitled to go outside the record and act on assumptions contrary to the facts on the record. 1956 Madh B 231 (235) [AIR V 43 C 90] (DB) \* 1955 Raj 19 (25, 26) [AIR V 42 C 8] : ILR (1953) 3 Raj 931 (DB). (Appeal under cl. (a) — Permit granted can be cancelled only on such objections which had been raised before the R. T. A.—The fact that the objectors have themselves not appealed does not prevent the appellate authority from taking those objections into consideration.)

[18] Where there is a competent appeal before it the appellate authority may take into its consideration all those objections which were urged and the materials which were placed before the R. T. A. in deciding whether or not the permit should be granted to the appellant even though those grounds of objection may not be those which were taken by the appellant himself. 1959 Assam 183 (186, 187) [AIR V 46 C 40] : ILR (1957) 9 Assam 206 (DB). (Hence in an appeal under cl. (a) an objection of the nature specified by cl. (b) can be validly considered.) \* 1955 Raj 19 (25, 26) [AIR V 42 C 8] : ILR (1953) 3 Raj 931 (DB) \* 1954 Assam 17 (18) [AIR V 41 C 3] (DB) \* 1953 Mad 1 (3) [AIR V 40 C 1] : ILR (1953) Mad 367 (DB).

**Power to grant additional permit**

[19] In an appeal under clause (a) the appellate authority has power to finally dispose it off by granting an additional permit to the appellant. There is no necessity for the authority remanding the case to the Regional Transport authority so that the R. T. A. may grant the permit after observing afresh the provisions of S. 57. 1958 Punj 465 (466) [AIR V 45 C 136] : ILR (1957) Punj 1151 (DB).

[20] On an appeal against an order refusing the grant of a permit the appellate authority can issue a permit to the appellant notwithstanding the fact that the issue of the same would cause the number of permits on the route to increase beyond the maximum limit fixed for that route by the R. T. A. 1952 Trav-Co 443 (444) [AIR V 39]. (The notification of the R. T. A. limiting the number does not have the force of law and therefore cannot constitute a bar on the powers of the appellate authority even if it has not been cancelled or withdrawn.) \* 1959 Raj 121 (122) [AIR V 46 C 46] : ILR (1959) 9 Raj 120 (DB). (Notice to existing operators of the proposal to increase the number need not be given.) \* 1957 Raj 99

**Section 64 — Note 4 (contd.)**

(101) [AIR V 44 C 39] : ILR (1957) 7 Raj 333 (DB). (But the appellate authority can increase the number only subject to the same principles which govern the R. T. A. in the matter. It cannot act arbitrarily.)

[21] The very fact that the appellate Authority has been empowered under S. 64 to hear appeals against the refusal of permit or grant of permit empowers it to take into consideration all the factors which may go in support of the grant of the permit or refusal of the permit. Whether there is any scope for increase or decrease in the number of permits to be granted being only one of such factors it would be futile therefore to contend that it cannot go behind the opinion of the R. T. A. on the question and reach a contrary decision. (58) ILR (1958) 8 Raj 792 (797).

*Power to grant temporary permit.*

[22] In the appeal against the order refusing to grant a permanent permit the appellate authority has no jurisdiction or power to grant a temporary permit to the appellant. 1960 Pat 238 (240) [AIR V 47 C 80] (DB).

*Variation of conditions*

**5. Appeals under cl. (b).—**[1] Any person aggrieved by any variation of the conditions of a permit can appeal under cl. (b). That clause does not restrict the right of appeal to the permit-holder. 1956 Raj 125 (126) [(S) AIR V 45 C 38] : ILR (1956) 6 Raj 86 (DB).

[But see 1952 Mad 545 (548) [AIR V 39] : ILR (1952) Mad 595 (DB). (AIR 1952 Mad 276. *Reversed.*)]

[2] The right of appeal conferred by cl. (b) is not confined to the particular permit-holder the conditions of whose permit have been varied. A rival permit-holder who is already providing transport facilities in or near the very area and who is affected by the variation has also a right to appeal under that clause. 1957 Raj 312 (315, 316) [(S) AIR V 44 C 116] : ILR (1957) 7 Raj 806 (FB). (AIR 1956 Raj 65 held to have expressed itself very widely in stating that the right of appeal under cl. (b) is restricted to the permit-holder only.)

[But see 1960 Ker 18 (23, 24) [AIR V 47 C 7].

[3] Any person who is adversely affected and aggrieved by the variation in another's permit, such as by the inclusion of a route or area, has a right to appeal under cl. (b) even though he has not raised any objections before the R. T. A. 1959 Raj 41 (43) [AIR V 46 C 12] : ILR (1958) 8 Raj 1112 (DB). (If an objection under S. 57 had been raised that would give him right of appeal under cl. (f) also.)

[4] Clause (b), in spite of its very wide language, cannot be construed as conferring a right of appeal on an indeterminate body of persons as the inhabitants of a locality who are catered by a bus service on the ground of any variation of the conditions of a permit about which they are aggrieved. 1957 Raj 312 (315, 317) [(S) AIR V 44 C 116] : ILR (1957) 7 Raj 806 (FB). (A I R 1956 Raj 65, *Approved.*) \* 1956 Raj 65 (66) [(S) A I R V 43 C 24] : I L R (1956) 6 Raj 110 (DB).

[5] Under S. 48 as it stood before its amendment in 1956 the route specified on the permit was undoubtedly a condition of that permit and a variation of that route gave rise to an appeal under this section. That right of appeal after it had accrued cannot be taken away by a subsequent change in the law. Hence even if the assumption is correct, that as a result of the amendment in S. 48, by which cl. (d) (ii) (a) has been made into sub-s. (2), it is no longer possible to consider the route as a condition and its variation as capable of giving rise to an appeal, a right of appeal which had already accrued and become vested by a variation taking place before the amendment will not be affected by that change. 1957 Raj 312 (318) [(S) AIR V 44 C 116] : ILR (1957) 7 Raj 806 (FB).

[6] An order permitting the replacement of a vehicle covered by a contract carriage permit by a vehicle of different nature or capacity is not an order varying the conditions of a permit and is therefore not appealable under S. 64. (57) 61 Cal W N 590 (599).

[7] The time fixed by the R. T. A. at the time of the permit is not one of the conditions of the permit and hence a subsequent change of that timing does not amount to the variation of a condition which would attract the application of cl. (b) of S. 64. 1952 Mad 545 (548) [AIR V 39] : I L R (1952) Mad 595 (DB) \* 1956 Vindh Pra 44 (45) [A I R V 43 C 25].

[8] No appeal lies against an order refusing to vary the conditions of a permit. 1957 Cal 444 (446) [AIR V 44 C 121]. (Hence order of the appellate authority directing the R. T. A. to allow the variation is without jurisdiction.) \* 1959 Andh Pra 413 (419) [AIR V 46 C 117] : ILR (1959) Andh Pra 375 (FB). (Refusal to vary the route.) \* 1959 Mys 12 (13) [AIR V 46 C 3] : ILR (1958) Mys 175. (Clause (b) clearly indicates that the legislature did not intend to confer a right of appeal against a refusal to vary conditions of a permit.) \* (59) ILR (1959) 9 Raj 570 (571, 572). (Appeal did not lie even before the amendment of the Act against an order refusing to vary the route although the route was a condition of the permit then.) \* 1953 Mad 321 (323) [A I R V 40 C 109] (DB). (The right does not arise by implication also.) \* (43) 1943 Nag L Jour 411 (411) (SB).

*Suspension of permits*

[9] An appeal by the rival permit-holders against an order suspending a permit on the ground that suspension is not a sufficient punishment does not lie. In such a case the rival permit-holders have no right of appeal at all because they can in no manner claim to be aggrieved by the order within the meaning of S. 64. 1958 Raj 51 (51) [AIR V 45 C 15] : ILR (1958) 8 Raj 25 (DB).

[10] The appellate authority has no power under the section to enhance a penalty meted out to a permit-holder by the R. T. A. Hence it cannot cancel the permit which has only been suspended by the R. T. A. 1958 Raj 51 (51) [AIR V 45 C 15] : I L R (1958) 8 Raj 25 (DB).

[11] An order of suspension of permit for a specified period, stayed during the pendency



**Section 64 — Note 5 (contd.)**

of the appeal, does not become infructuous because of the expiry of that period during the stay. Since the effect of the stay is to merely suspend its operation the permit would stand suspended for the full period after the stay is cancelled consequent on the dismissal of the appeal. 1957 Ker 142 (143) [AIR V 44 C 78].

**6. Appeals under cl. (e).** — [1] A right of appeal under cl. (e) can arise in favour of an applicant for the renewal of his permit only if his application had been refused by the transport authority by an order passed in accordance with sub-s. (7) of S. 57. Where the transport authority without considering the applications as required by the Act and without passing an order in the above manner merely intimates its decision not to renew permits in view of nationalization of transport undertaken by the Government no question of the applicants preferring any appeal under S. 64 can arise at all. 1951 Him Pra 36 (40) [AIR V 38 C 11]. (Hence their application under Art. 226 cannot be confronted by the objection of an alternate remedy being open.)

**7. Appeals under cl. (f).** — [1] A person who provided transport facilities and opposed before the R. T. A. the grant of a permit would be entitled to appeal under cl. (f) even though he had not applied for a permit to himself. 1953 Mad 1 (3) [AIR V 40 C 1] : ILR (1953) Mad 367 (DB).

[2] The fact that a person provides transport facilities cannot by itself confer on him the right to appeal under cl. (f) against the grant of a permit. It is in addition necessary that he should have opposed the grant of the permit itself. Thus where he had opposed only the variation of an existing permit of the applicant and not the issue of the new permit to him he has no right to appeal against the issue of the new permit. 1960 Ker 18 (21) [AIR V 47 C 7] \* 1957 Mys 19 (20) [AIR V 44 C 13] : ILR (1956) Mys 400 (DB).

[3] Assuming that a panchayat is a local authority envisaged in cl. (f) it can appeal against the grant of a permit only if it had opposed the grant before the R. T. A. 1956 Raj 65 (66) [(S) AIR V 43 C 24] : ILR (1956) 6 Raj 110 (DB).

[4] A person may have a right of appeal under cl. (f) even though he had opposed the grant of the permit before the R. T. A. only formally and not by a representation in writing as required by sub-ss. (2) and (3) of S. 57. 1953 Mad 1 (3) [AIR V 40 C 1] : ILR (1953) Mad 367 (DB) \* 1960 Mys 11 (14) [AIR V 47 C 2] : ILR (1958) Mys 589 (DB). (Oral opposition is sufficient to confer a right of appeal under cl. (f).) \* 1959 Pat 111 (112) [AIR V 46 C 26] (DB) \* 1959 Raj 119 (120) [AIR V 46 C 45] : ILR (1959) 9 Raj 144 (DB). (Foundation for appeal under cl. (f) can be laid by raising oral objections to the grant of a temporary permit before the R. T. A.) \* ('55) ILR (1955) Trav-Co 52 (65).

[But see 1956 Ajmer 41 (43) [AIR V 43 C 31] \* 1953 Vindh Pra 41 (42) [AIR V 40 C 21]. (The appellate authority has no

inherent powers to condone the omission and give relief to the appellant.) \* 1952 Trav-Co 443 (444) [AIR V 39]. (Case decided under cl. (c) of S. 60 of the Travancore Motor Vehicles Act corresponding to cl. (f) of S. 64 of this Act.) \* 1951 Orissa 81 (84) [AIR V 38 C 26] (DB). (Order setting aside grant on an appeal by person who filed a belated objection under S. 57 (4) is without jurisdiction. The representation constitutes no opposition at all.)

[5] The opposition contemplated by cl. (f) as a condition precedent to the exercise of a right of appeal is not the representation contemplated by sub-s. (4) of S. 57. Hence in a case where there is a single permit to be granted the opposition of one rival applicant to the grant of the permit to another is implied and that itself is sufficient to give the unsuccessful applicant a right of appeal. 1959 Assam 171 (173) [AIR V 46 C 37] (DB).

[6] The right of appeal conferred by cl. (f) is available even against the grant of a temporary permit. Hence a rival permit-holder who has opposed the grant of such a permit and is aggrieved by the order of the R. T. A. granting it is entitled to appeal against the order under that clause. 1958 Raj 176 (179) [AIR V 45 C 58] : ILR (1958) 8 Raj 624 (DB). (Application of the clause does not depend on the question whether the appellant was a person who was entitled to oppose the grant i.e. to say as an existing operator.) \* 1959 Raj 119 (120) [AIR V 46 C 45] : ILR (1959) 9 Raj 144 (DB).

[But see 1958 Ker 19 (22) [AIR V 45 C 7].]

[7] The appellate authority has to take into its consideration even the representation of a temporary permit-holder which had been made by him at the time when the permit was granted by the R. T. A. 1957 Punj 35 (37) [AIR V 44 C 13] : ILR (1957) Punj 315.

[8] Under cl. (f) not only a person who is aggrieved by an order granting a permit but also one who is aggrieved by a renewal can appeal. 1956 Pat 437 (439) [AIR V 43 C 105] : 34 Pat 429 (DB).

[But see 1959 Mys 17 (18) [AIR V 46 C 5] : ILR (1958) Mys 421 (DB). (Hence no appeal lies at the instance of the person who opposed the renewal.) \* 1956 Vindh-Pra 38 (39) [AIR V 43 C 20]. (A right of appeal being a substantive right has to be expressly conferred by the statute and cannot be inferred. Section 64 has not conferred a right in the case of a renewal and such a right cannot be inferred from S. 58 (2) which requires that an application for renewal should be treated as an application for permit for procedural purposes.)]

[9] After the Act has been amended in 1958 the fixation of timings, at the time of the grant of the permit, is a condition to the permit and such a condition attached to a permit is appealable under cl. (f) of S. 64 by a person coming within the ambit of that clause. 1960 Ker 111 (113) [AIR V 47 C 52] : ILR (1960) Ker 172.

[10] The fact that an association is an unregistered one does not disqualify it from preferring an appeal under cl. (f). 1951 Cal



**Section 64 — Note 7 (contd.)**

255 (257) [AIR V 38 C 53] : ILR (1951) 2 Cal 437 (SB).

[11] The "association" referred to in the section need not necessarily be an incorporated one. 1957 Cal 444 (446) [(S) AIR V 44 C 121].

**8. Opportunity of being heard.**—[1] A decision given by an appellate authority without hearing the appellant is in violation of the principles of natural justice and against the express provisions of this section. 1956 Vindh-Pra 44 (45) [AIR V 43 C 25]. (Such an order was quashed in this case by a writ of certiorari.) \* (55) ILR (1955) Trav-Co 52 (67). (Dismissal of appeal for non-appearance of appellant—No notice of hearing given to appellant—Dismissal null and void.)

[2] The appellate authority cannot dismiss an appeal under the section without giving a hearing to the appellant even though under a rule framed under the Act the authority may be construed to possess such a power. The provisions of the section are mandatory and any rule which is in derogation of the section cannot prevail over it. 1959 Tripura 35 (37) [AIR V 46 C 14].

[3] The opportunity which S. 64 requires to be given to an appellant is a reasonable opportunity of presenting his case. Hence where the appellant was not given an opportunity to look into a police report used by the appellate authority and contradict the matters therein which were prejudicial to his case it cannot be said that he had the opportunity to which he was entitled under the section. (57) 61 Cal W N 779 (787, 788).

[4] There is nothing in the Act which enjoins on the appellate authority the duty to give an oral hearing to a person who invokes its appellate jurisdiction. All that it has to do as a quasi-judicial tribunal is to give sufficient opportunity to the person who approaches it for the exercise of its jurisdiction to state his case. Thus where the appellant has stated all his grounds of objection to the original order in his appeal petition it cannot be said that the order made thereon by the appellate authority is vitiated as contravening the principles of natural justice merely because the appellant was not orally heard by the authority. (58) 1958 Andh L T 627 (632). (*ibid.*, that there is no duty to hear personally under the Motor Vehicles Rules also.)

[5] It is true that S. 64 does not expressly provide for any notice being given to any person other than the appellant and the Transport Authority, but the moment it is intended to affect the right of any third person by any order made in the appeal, a duty arises according to the principles of natural justice to give notice to the persons affected. 1953 Cal 587 (587) [AIR V 40 C 221] \* 1954 Assam 17 (17, 18) [AIR V 41 C 3] (DB).

[6] The appellate authority has a judicial function to perform under S. 64. The fact that the section does not expressly require that the person to whom a permit had been granted should be heard if his permit is to be cancelled does not affect its obligation to

observe the principles of natural justice and give him a hearing before cancelling the permit. 1953 Assam 157 (158) [AIR V 40 C 88] : ILR (1953) 5 Assam 163. (An order passed without such hearing is in excess of its jurisdiction and hence can be quashed by a writ of certiorari.) \* 1960 Raj 201 (204, 205) [AIR V 47 C 49] : ILR (1959) 9 Raj 1167 (DB). (The fact that those persons had some knowledge of the appeal filed against them or about the date of hearing does not dispense with the necessity to issue a notice to them.) \* (58) ILR (1958) 8 Raj 792 (796) (DB) \* 1957 Punj 35 (37) [AIR V 44 C 13] : ILR (1957) Punj 315 \* 1956 Ajmer 41 (46) [AIR V 43 C 31].

[7] Where pending an appeal by another against the cancellation of his permit a person is granted a permit subject to the condition that it would stand cancelled if the appeal of the other succeeded has no right to be heard in that appeal in support of the order of cancellation. Such a person being not a party to the proceedings in which the permit of the other person was cancelled cannot be said to be a person interested in the appeal within the meaning of R. 73 (b) of the Motor Vehicles Rules framed under the Act. (60) 1960 Jab L Jour 958 (961) (DB). (The condition attached being a condition subsequent was within the power of the authority to lay down in the permit.)

[8] Where in an appeal under Cl. (a) the appellate authority grants a permit to the appellant without cancelling any permit already granted to others its order cannot be condemned as one which has been passed in contravention of the principles of natural justice merely because those other grantees of permits have not been heard before the order was passed. 1958 Punj 465 (466) [AIR V 45 C 136] : ILR (1957) Punj 1131 (DB).

[9] Besides the parties interested in the grant of stage carriage permits or those interested against it the police authority of the locality is also entitled to be heard at the appellate stage. 1957 S C 232 (236) [(S) AIR V 44 C 32] : 1957 SCR 98.

[10] A party who has been heard before an order was passed by the R.T.A., is a necessary party to the appeal in which that order is attacked. 1960 Punj 142 (144, 145) [AIR V 47 C 46] : ILR (1959) Punj 2108.

[11] A respondent in an appeal has a right to be heard by the appellate authority by virtue of R. 73 of the Madhya Pradesh Motor Vehicles Rules even though this section itself has conferred no such right on him. 1957 S C 232 (236) [(S) AIR V 44 C 32] : 1957 SCR 98.

[12] Though the appellate authority has heard and decided an appeal before the expiry of the period of notice prescribed by the Rules its decision will not be rendered invalid where the parties have not raised any objection before it on that score. The parties in these circumstances will be deemed to have waived their objection. 1957 Raj 312 (315) [(S) AIR V 44 C 118] : ILR (1957) 7 Raj 806 (FB). (Period prescribed by R. 108, Rajasthan Motor Vehicles Rules not observed by the authority.)

[13] In matters relating to renewal of permits the appellate authority acts as a quasi-

**Section 64 — Note 8 (contd.)**

judicial body and hence the person aggrieved by the renewal has been given the right to adduce evidence before that authority and be heard by it. 1955 NUC (All) 3540 [AIR V 42].

**9. Procedure in appeals.**—[1] The appellate authority under the Act cannot be equated with Courts of law. It is not bound to adopt the procedure followed in Courts of law in all cases but can regulate its own procedure. 1957 Andh Pra 830 (831) [(S) AIR V 44 C 252].

[2] The jurisdiction of the appellate authority to entertain an appeal under the section will not be affected by the omission of the appellant to file a certified copy of the order appealed against. It is open to the authority to condone the omission since the requirement as to the filing of certified copy is only a procedural matter. 1956 Ajmer 41 (43) [AIR V 43 C 31].

[3] The appellate authority under this Act does not administer justice as a Court of law although in deciding the cases it has to act judicially. Therefore the fact that the Court of law in certain circumstances will have to adjourn a case on the principle of natural justice, even *suo motu*, does not mean that the appellate authority under this Act also should, in similar circumstances, act in the same manner and adjourn the case even in the absence of a prayer from the parties. 1957 S C 232 (237) [(S) AIR V 44 C 32] : 1957 S C R 98. (Appellate tribunal reading out before the parties report of police called for under S. 47—Parties neither objecting to its use nor asking for adjournment on the ground of surprise or for producing materials to controvert the report—Tribunal does not act wrongly in using the report straightway without adjourning the case.)

[4] The appellate authority functions as a quasi-judicial body when it deals with the grant or a refusal to grant permits. Hence its order which proceeds to set aside the order of the R. T. A. should *ex facie* show in a succinct manner the reasons which have induced it to pass the order. 1957 Raj 237 (239) [AIR V 44 C 90] : ILR (1955) 5 Raj 545 (DB).

[5] An appellate authority which acts judicially in hearing an appeal under the section must give its reasons for its decision and those reasons must show that the authority had applied its mind to the questions on its hand. 1952 Mad 276 (279, 280) [AIR V 39] : 1952 Cri L Jour 616.

[6] An appellate authority should confine its determination to the materials on the record and deal with the points raised by the appellant. 1960 Assam 100 (103) [AIR V 47 C 28] (DB).

[7] The appellate authority cannot go into new factors which were never presented to the R. T. A., either of its own accord or even at the request of parties and decide the appeal on that basis. 1959 Assam 183 (188) [AIR V 46 C 40] : ILR (1957) 9 Assam 208 (DB).

[8] The appellate authority in determining appeals cannot take into consideration matters which are extraneous to the object and pur-

pose of the Act. 1960 Assam 100 (103) [AIR V 47 C 28] (DB).

[9] An appellate authority does not function as a Court of facts and therefore its order is not vitiated because some of the considerations on which it is based are not relevant considerations under the Act. 1959 Punj 473 (475) [AIR V 46 C 143] : ILR (1959) Punj 1644. (Appellate authority relying on a promise made by the Government to one of the applicants as one of the reasons for preferring him.)

[10] Although there is no specific provision as to the powers of the appellate authority under the Act it is implied in the provisions for appeal that it has power to set aside the order of the Regional Transport Authority and grant a relief claimed. 1957 Raj 237 (239) [AIR V 44 C 90] : ILR (1955) 5 Raj 545 (DB).

[11] The powers of the appellate authority in disposing of an appeal under this section is not defined in the Act. Hence, where the appellate authority, not wishing to disturb the operation of a permit which it found had not been validly granted, allowed the permit holder to ply his bus for the unexpired period and contended itself by declaring the permit to be null and void forthwith and also directing the Regional Transport Authority not to treat it as a valid permit for purposes of renewal it was held that there was nothing illegal or even improper in the direction given to the R. T. A. 1957 All 254 (256) [(S) AIR V 44 C 73] (DB).

[12] The Government to which power has been given by the legislature to prescribe the appellate authority, the manner in which that authority should be constituted and also to make rules for the conduct of business by such body can validly make a rule fixing the quorum and also authorising the chairman to conduct the meeting without the quorum. 1960 Andh Pra 288 (270) [AIR V 47 C 82] (DB).

[13] The Government can validly make a rule under S. 68 authorising the authority prescribed by it to hear and dispose of appeals under this section to delegate its power to grant or refuse interim stay. Although the power to grant interim stay is ancillary and incidental to the power to hear and dispose of appeals conferred by the Act the rule authorising its delegation is not invalid because the Act itself has empowered the authority to delegate its powers in accordance with the rules made by the Government. 1957 Andh Pra 830 (831) [(S) AIR V 44 C 252.]

**Remand**

[14] An appellate authority disposing of an appeal under S. 64 has the power to remand, it being ancillary and incidental to the power to dispose of an appeal. 1959 Andh Pra 321 (323) [AIR V 46 C 93] : ILR (1959) Andh Pra 54 (DB) \* ('58) 1958 Andh L T 627 (830). (Absence of express provisions in the Act or the Rules is immaterial.) \* 1956 Ajmer 41 (45) [AIR V 43 C 31]. (Power to remand is inherent in the appellate authority.)

**Section 64 — Note 9 (contd.)**

*Review*

[15] The appellate authority becomes *functus officio* after deciding an appeal except for the purpose of correcting the clerical errors or its own mistakes in the decision. It has no power to review the decision at the instance and for the benefit of a party inasmuch as the statute has not conferred any such jurisdiction on it expressly. (54) 1954 Ker L Tim 899 (901).

[16] Though the appellate authority has no power to review or revise its previous orders there is nothing to prohibit it from clarifying the meaning of those orders. 1959 Pat 111 (112) [AIR V 46 C 26] (DB).

**10. Limitation.** — [1] Although the memorandum of an appeal under this section had been put into transmission through post before the expiry of the period of limitation prescribed by the Rules for presentation of appeals the appeal cannot be considered to have been presented within time when it actually reached the hands of the appellate authority only after the expiry of the prescribed period. 1959 Mad 386 (387) [AIR V 46 C 121] : ILR (1959) Mad 705.

[2] Where the rules provide that an appeal under the section has to be filed by attaching a certified copy of the order to the memorandum of appeal within a specified period from the date of the "receipt of the order" time will not begin to run from the date when the order was dictated by the Regional Transport Authority even though in the presence of the parties. (49) 28 Lah L Tim 1 (2).

[3] Where the Regional Transport Authority passed in review an order granting a permanent permit in the place of the conditional permit which it had granted originally and it was the passing of the order on review and not the original one which aggrieved the appellant and created the occasion for an appeal it was held that the prescribed period of limitation began to run only from the date of the order in review and not from the date of original order of the Regional Transport Authority. 1960 Pat 6 (8) [AIR V 47 C 2] (DB).

[4] The appellate authority has no jurisdiction to extend or abridge the period of limitation prescribed by the Rules for filing appeals under the section. 1957 Pat 117 (120, 121) [AIR V 44 C 37] : 35 Pat 802 (DB). (Section 5 of the Limitation Act does not apply to the proceedings under the Act.)

*Writs against appellate orders*

**11. Remedies against appellate orders.** —

[1] The Appellate Tribunal under Motor Vehicles Act is a judicial authority subject to the High Court's judicial supervision, and amenable to its guidance and correction. 1953 Vindh-Pra 41 (42) [AIR V 40 C 21].

[2] Though an appellate authority hearing an appeal under this Act is not a Court as ordinarily understood an order passed by it after hearing the parties and deciding between a proposal and an opposition is a judicial order and hence a writ of certiorari can be issued against the order. 1951 Orissa 81

(84) [AIR V 38 C 26] (DB) + 1953 Raj 193 (198) [AIR V 40 C 68] : ILR (1955) 3 Raj 13 (DB).

[3] An order passed by the appellate authority cancelling the permit granted by the Regional Transport Authority can be interfered with by the High Court in a proceeding under Art. 226 of the Constitution. 1952 Madh-B 128 (129) [AIR V 39].

[4] An order of the appellate authority passed on an incompetent appeal by a person not entitled to appeal under this section can be quashed by the High Court by a writ of certiorari. 1948 Mad 454 (456) [AIR V 35 C 219] : 11 L R (1949) Mad 194 (10) + 1960 Raj 105 (117) [AIR V 47 C 27] : ILR (1959) 9 Raj 869 (DB) + 1959 Pat 580 (582) [AIR V 46 C 164] (DB). (Order passed in an incompetent appeal cannot be deemed valid by treating it as one passed in revision under S. 64A by some fiction of law.)

[5] An order giving relief to an appellant in respect of a matter not covered by the appeal and to the detriment of a person not a party to the appeal is one without jurisdiction. Such an order can be quashed by the High Court by a writ of certiorari. 1952 Mad 39 (39, 40) [AIR V 39] : ILR (1952) Mad 306.

[6] In the proceedings under Art. 226 the High Court cannot act as a Court of appeal and examine the correctness of the order of the appellate authority by going into the evidence which was before that authority. 1959 Punj 473 (474) [AIR V 46 C 143] : ILR (1959) Punj 1644 + 1953 Pat 75 (77) [AIR V 40 C 22] : 32 Pat 43 (DB).

[7] An order of the appellate authority cannot be interfered with by a writ of certiorari on the ground of any inconsistency in the argument with respect to the various points decided by it. Such an inconsistency cannot be said to be an error of law apparent on the face of the record. 1955 Raj 19 (26) [AIR V 42 C 8] : ILR (1953) 3 Raj 931 (DB).

[8] Reading this section with R. 108 framed under the Rajasthan Motor Vehicles Ordinance it is obvious that the appellate authority has the widest power and has jurisdiction to determine questions of limitation and locus standi and therefore its decision cannot be interfered with by a writ of certiorari even though it may be wrong. 1955 Raj 19 (24) [AIR V 42 C 8] : ILR (1953) 3 Raj 931 (DB).

[9] The fact that a stay is ordered pending the revision to the Government or a writ petition to the High Court against an appellate order setting aside the permit to A and directing the issue of the permit to B does not entitle A to the permit. The stay order has not the effect of automatically reversing the appellate order in question. 1956 Mad 143 (144) [AIR V 43 C 37] (DB).

*Revision under State amendments.*

[10] Under cl. (h) added to this section by the East Punjab Act, 28 of 1948 the Government has unlettered powers to alter, revise, cancel or uphold the orders of the appellate authority. 1959 Punj 638 (642) [AIR V 46 C 203] : ILR (1959) Punj 2121.

[11] An appeal rejected as incompetent is nonetheless an appeal decided by the appellate

\***[64A. Revision.**

The State Transport Authority may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit :

Provided that the State Transport Authority shall not entertain any application from a person aggrieved by an order of a Regional Transport Authority, unless the application is made within thirty days from the date of the order :

Provided further that the State Transport Authority shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 59. [w. e. f. 16-2-1957].

**Section 64 — Note 11 (contd.)**

authority and hence the Government is entitled to exercise in regard to that decision the powers conferred on it under cl. (h) added to the section by the Punjab Act, 28 of 1948. 1959 Punj 638 (642) [AIR V 46 C 203] : I L R (1959) Punj 2121.

[12] A party who has been heard by the R. T. A. before an order was passed has the right to approach the Government under cl. (h) as an aggrieved party when the appellate authority sets aside that order in an appeal to which he has not been made a party. 1960 Punj 142 (145) [AIR V 47 C 46] : I L R (1959) Punj 2108.

[13] Under cl. (h) added to the section by East Punjab Act, 28 of 1948 the Government has power to act even suo motu and hence for the purpose of its exercising the power it is absolutely immaterial as to how the matter has been brought up before it. 1960 Punj 142 (145) [AIR V 47 C 46] : I L R (1959) Punj 2108.

[14] Clause (h) added to the section by East Punjab Act, 28 of 1948 does not confer an unregulated and arbitrary power on the Government to alter, cancel etc., an order passed by an appellate authority and hence it is not unconstitutional. The power conferred by the clause is limited to interference only if the order is considered to be illegal, or improper or unreasonable and therefore a finding to that effect by the Government is necessary to enable it to exercise the power. 1960 Punj 142 (145) [AIR V 47 C 46] : I L R (1959) Punj 2108.

[15] The High Court in a proceeding under Art. 226 will not interfere on merits, with the order of the Government passed under cl. (h). 1960 Punj 142 (145) [AIR V 47 C 46] : I L R (1959) Punj 2108.

[16] The State Government has power under S. 64A, added to this Act by the Motor Vehicles (Madras Amendment) Act, 20 of 1948, to interfere with an order made by the appropriate authority under this section where it is satisfied that it is an illegal, irregular or improper order. 1958 S C 463 (467) [(S) AIR V 43 C 80] : 1956 S C R 256.

[17] An appellate order which is good cannot be interfered with in revision under S. 64A (Madras) on the ground of any error in the original order of the R. T. A. which is capable of being rectified by the appellate authority.

1960 Andh Pra 371 (2) (373) [AIR V 47 C 121]. (Fact that R. T. A.'s order did not contain reasons cannot vitiate the appellate order also where it has remedied that defect.)

**Second appeal**

[18] No second appeal lies against an order passed in an appeal under this section. 1960 Pat 537 (538) [AIR V 47 C 181]. (Rules 70 and 71 of the Bihar Motor Vehicles Rules make a provision for dealing with appeals against original orders of the State Transport Authority and the Regional Transport Authority. Rule 70 cannot be construed as conferring a right of further appeal against an order passed by the State Transport Authority in the exercise of its appellate powers.) \*1953 Nag 150 (151) [AIR V 40 C 51] : I L R (1953) Nag 675.

[19] Section 64 does not contemplate a second appeal from an appellate order and hence a rule which provides for such an appeal is invalid as being ultra vires the section. (54) I L R (1954) Trav-Co 771 (776) (DB) \*1957 Mys 7 (8) [AIR V 44 C 4] : I L R (1956) Mys 231 (DB). (Rule 276 framed by the Mysore Government is therefore not valid.)

[20] The rule making authority constituted under S. 68 has no power to lay down by rules and confer a right of appeal not recognised or granted by S. 64. 1953 Mad 321 (325) [AIR V 40 C 109] (DB).

[21] Under S. 64 as it stands amended in the Mysore State an order passed in appeal is open to a second appeal to the Board of revenue. 1959 Mys 23 (25) [AIR V 46 C 7] : I L R (1958) Mys 127 (DB). (Fixation of timings of buses — State Transport Authority has the original jurisdiction in the matter — R. T. A. fixing time—State Transport Authority cannot deal with the question as an appellate authority.)

**Section 64A — Note 1**

[1] There is no repugnancy between S. 64A inserted by the Central Act 100 of 1956 and sub-s. (2) which has been added to S. 64 by the Madras State Legislature. Therefore the latter provision has not become void under Art. 254 of the Constitution. 1958 Ker 19 (21) [AIR V 45 C 7]. (It is quite possible for the tribunal appointed under S. 64 and the State

## SECTION 64A ANDHRA PRADESH

## STATE AMENDMENTS

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, after section 64 the following section was inserted, namely,—

“64A. *Revision.* — The State Government may, of its own motion or on application made to it, call for the records of any order passed or proceeding taken under this Chapter by any authority or officer subordinate to it, for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding and after examining such records, may pass such order in reference thereto as it thinks fit.”

—Madras Act XX of 1948, S. 12. [21-12-1948].

### Section 64A — Note 1 (contd.)

Transport Authority to function concurrently as revisional authorities, the former over the R. T. A. as well as the State Transport Authority and the latter over R. T. A. only. Hence the test of harmonious co-existence and simultaneous obedience is satisfied.)

[2] There is nothing in S. 64A that either expressly or impliedly discloses an intention to be a complete or exclusive provision for revision against the orders of a Regional Transport Authority. The Act does not say that the revisional jurisdiction is to be exercised only by the State Transport Authority or give any indication that no other remedy than an appeal under S. 64 or a revision under S. 64A is open to an aggrieved party. 1958 Ker 19 (21) [AIR V 45 C 7].

[3] Section 64A does not provide a specific legal remedy which would bar a certiorari. 1959 Mys 17 (19) [AIR V 46 C 5] : ILR (1958) Mys 421 (DB). (The section only deals with the power of the S. T. A. to interfere with an order of the R. T. A. and not with the rights of the party who is affected by the order. A party may approach the Authority but not as a matter of right. Nor has he any right to a remedy because the Authority may refuse him a remedy under the section.)

[4] The fact that the aggrieved party may seek remedy under S. 64A may be taken into consideration by the High Court in deciding whether it should exercise its discretion under Art. 226 of the Constitution to quash the order of the R. T. A. by a writ of certiorari. 1959 Ker 398 (399) [AIR V 46 C 143].

[5] The Court in the exercise of its power of certiorari cannot interfere with an order made by the State Transport Authority under this section merely because it is of the opinion that the view taken by that Authority regarding the legality, regularity or the propriety of the order of the R. T. A. is erroneous. 1958 Ker 341 (344) [AIR V 45 C 122]. (The satisfaction which is required on the part of the S. T. A. is only a subjective satisfaction and not an objective one.)

[6] A vague and ambiguous notice which does not disclose the case against the party who is called upon to show cause is a violation of the second proviso to S. 64A and the proceedings initiated by such notice should be quashed. 1959 All 495 (498) [AIR V 46 C 126].

[7] Under S. 64-A, limitation for revision against the order of the Regional Transport Authority to the State Transport Authority begins from the date the aggrieved party has notice of the order of the Regional Transport Authority and not from the date the order is

made. 1960 Mys 141 (142) [AIR V 47 C 36] (DB).

[8] An order passed by the Appeal board of the State Transport Authority can by no fiction of law be held to be an order passed by it in revision under this section. 1959 Pat 580 (582) [AIR V 46 C 164].

[9] Timings fixed and attached to the permit constitute a condition of the permit and as such is appealable under cl. (f) of S. 64. Hence no revision under this section can be preferred against the grant of timing treating it as if it constituted a separate order. 1960 Ker 111 (113) [AIR V 47 C 52] : ILR (1960) Ker 172.

### Section 64A (Andhra Pradesh) — Note 1

[Note. — The cases decided under S. 64A (Madras) which has been now repealed in the State of Madras by Madras Act 39 of 1954 have been included in this note as the section in the State of Andhra Pradesh is the same as was in Madras—*Ed.*]

[1] Section 64A inserted into the Act by the State legislature of Madras is constitutionally valid provision. It was not only within the competence of the State legislature to enact the provision but the provision itself is a reasonable one as it is in keeping with the entire scheme of the Act concerning transport vehicles and control of road transport. 1956 S C 463 (468) [(S) AIR V 43 C 80] : 1956 S C R 256.

[2] Section 64A, in spite of its wide language, does not clothe the government with a naked and arbitrary power and thereby render the right guaranteed by Art. 19 (1) (g) of the Constitution illusory. Hence the section cannot be condemned as unconstitutional. 1953 Mad 279 (293) [AIR V 40 C 102] : ILR (1953) Mad 304 (DB). (The section confers a judicial power and that power however wide it may be cannot be held to be arbitrary. Moreover, the power conferred being one to review the orders passed by subordinate authorities in judicial proceedings it would also be reasonable to hold that it is subject to the limitations as those which apply to the powers of the subordinate authorities. If that is so the Act itself has sufficiently defined the extent of the powers of the subordinate authorities and therefore the Government has no arbitrary power under S. 64A.)

[3] The Government acting under S. 64A exercises judicial powers. It is therefore a tribunal and as such amenable to the superintendence of the High Court under Art. 227 of the Constitution. 1957 Andh-Pra 739 (743) [AIR V 44 C 233].

**Section 64A (Andh Pra) — Note 1 (contd.)**

[4] The Government cannot exercise its revisional powers in an arbitrary, wanton or a mala fide manner. 1952 Mad 300 (304) [A I R V 39] (DB).

[5] An order of the Government which sets aside an order of an inferior tribunal on a bare statement that it is illegal, irregular or improper cannot amount to a judicial disposal of the revision petition. In order to constitute a proper disposal the order must ex facie state succinctly the reasons therefor. 1952 Mad 276 (280) [AIR V 39] : 1952 Cri L Jour 616. (It is the elementary duty of a tribunal which has been given power to act judicially and pass orders affecting the rights of parties to state in the order reasons which would show that it had applied its mind to the case.)

[6] A petition under Art. 226 to quash an order of the Regional Transport Authority asking to renew a permit should be dismissed in limine where the petitioner who has an adequate remedy by way of appeal and revision under Ss. 64 and 64A respectively did not avail himself of them. 1955 Mad 205 (206) [(S) AIR V 42 C 51] (DB).

[7] A Court exercising the power of certiorari cannot intervene merely because it is of opinion that the State Government has taken an erroneous view as to the legality, regularity or propriety of an order in the proceedings under this section. 1956 S C 463 (467) [(S) AIR V 43 C 80; 1956 S C R 256. (The satisfaction of the State Government on the question is merely an expression of its opinion and not the determination of a fact upon which depends its jurisdiction to exercise its powers under S. 64A.) \* 1957 Andh-Pra 55 (57) [AIR V 44 C 25] : ILR (1956) Andh 726 (DB). (An order may be neither illegal nor irregular but still it can be set aside as improper. Where it is so set aside the Court will not interfere because it is of different opinion. Thus where the appellate authority cancelled the permit to A and granted it to B and the Government in revision set aside that order, cancelled B's permit and restored the permit of A after giving due consideration to the matter the Court will not investigate under Art. 226 of the Constitution into the relative merits of those orders and interfere with the Government's order on its own view on the question. 1957 Mad 623 (626, 627) [(S) AIR V 44 C 188] (DB) \* 1956 Andh 217 (221) [AIR V 43 C 61] : ILR (1956) Andh 712 (DB).

[8] An appellate order wrongly dismissing an appeal as incompetent and the revisional order of the government confirming that appellate order should both be quashed by a writ of certiorari on the ground of having committed an error which related to jurisdiction. 1955 Mad 386 (387) [(S) AIR V 42 C 103] : ILR (1956) Mad 24 (DB).

[9] Where an order passed in revision under this section is quashed by a writ of certiorari on a ground which does not deal with merits the Government is bound to take up the revision application and hear the same. 1952 Mad 605 (606) [AIR V 39] : ILR (1952) Mad 351 (DB).

[10] The State Government in exercise of its revisional power under S. 64A can remand the

case to the Regional Transport Authority for disposal even though the revision preferred before it was from the order of the appellate authority. 1959 Andh Pra 321 (324) [AIR V 46 C 93] : ILR (1959) Andh Pra 54 (DB). (The revisional power conferred on the Government under S. 64A is analogous to the jurisdiction vested in the High Court under S. 115, Civil P. C. The power of the Government under the section as to the mode of the disposal is not subject to any limitation.)

[11] The Regional Transport Authority dealing with an application for mutual transfer of permits has jurisdiction to decide the matter when there is a dispute between the parties as to the existence of a true agreement which is necessary to support the application. Where that authority dismissed the application on the ground that it has no such jurisdiction the State Government dealing with the matter in revision should itself go into that matter and give a finding or direct the Regional Transport Authority to consider that question. An order disposing of the revision in any other way cannot be supported. 1957 Andh Pra 978 (981) [AIR V 44 C 313] (DB).

[12] The Government cannot treat a revision petition as an application made to them for variation of a permit and dispose of it as such in the first instance. The Government has no power either under the Act or the Rules to deal originally with an application for variation. 1958 Mad 236 (239) [A I R V 45 C 72] (DB).

[13] The State Government in its revisional jurisdiction under this section cannot pass an order which the original authority, whose order it is revising, had no jurisdiction to pass. 1960 S C 1191 (1194) [AIR V 47 C 208]. (The State Government can no doubt set aside an order which had been passed without jurisdiction but it cannot substitute for that order its own order directing the variation of the conditions of a permit.)

[14] An order of the Government which purports to confirm, modify or substitute an order of the subordinate authority, which was without jurisdiction, is void. 1958 Mad 236 (239) [AIR V 45 C 72] (DB). (But the invalidity of the original order cannot affect the validity of the order in revision when it merely sets aside the original order.)

[15] The Government cannot set aside in revision an appellate order because of any defect in the original order where the defect is one which can be set right by the appellate authority and has in fact been so set right in its order. 1960 Andh Pra 371 (2) (373) [A I R V 47 C 121]. (Refusal to grant permit—Order of R. T. A not stating reasons—Appellate order rectifying defect—Latter order cannot be set aside on the ground of defect in R. T. A's order.)

[16] An order which the government has power to pass in revision will not be vitiated by the fact that the order does not state that the revisional powers of the Government had been invoked or that they are passing the order in exercise of such revisional powers. 1955 Mad 660 (662) [(S) A I R V 42 C 210] : ILR (1956) Mad 498 (DB).



**BIHAR**

In its application to the State of Bihar, after section 64 the following section was inserted, namely,—

“64A. *Power of State Government to call for records.*—The State Government may, on application made to it in this behalf, within thirty days of the passing of the order in the course of any proceedings taken under this Chapter by any authority or officer call for the records of such proceedings, and after examining such records pass such orders as it thinks fit.”

—Bihar Act XXVII of 1950, S. 13. [21-7-1950].

**Section 64A (Andh Pra) — Note 1 (contd.)**

[17] The fact that the Government in interfering with an improper order has described it as an irregular order does not vitiate its order. (56) ILR (1956) Andh 319 (324).

[18] The power of the Government under the section can be exercised by it even in a case where an appeal lies. 1959 Andh Pra 413 (419) [A I R V 46 C 117] : 11 L R (1959) Andh Pra 375 (FB). (In this respect S. 64A differs from S. 115, Civil P. C., which expressly limits the power of the High Court under that section to cases in which no appeal lies.)

[19] The Government cannot set aside the order of a subordinate Tribunal by taking into consideration facts which were brought to its notice for the first time. The power of the Government under this section is limited by its express provisions which require it to satisfy itself as to the legality, regularity or propriety of an order solely from the records of the subordinate Tribunals. 1957 Andh Pra 383 (384) [A I R V 44 C 123] (DB).

[20] It is open to the Government exercising revisional powers under this section to take into its consideration, for the first time, any of the matters mentioned under S. 47, even though they had not been taken into account by the R. T. A. 1952 Mad 300 (305) [A I R V 39] : 11 L R (1952) Mad 698 (DB).

[21] An operator or a person interested who did not file his representations under S. 57 (3) within the time prescribed is not entitled to any notice before the order passed under that section is interfered with by the revisional authority. 1955 Mad 600 (661, 662) [(S) A I R V 42 C 210] : 11 L R (1956) Mad 498 (DB).

[22] An order passed by the State Government under S. 64A falls within the meaning of the expression “executive action” in Art. 166 of the Constitution because that expression in that Article is comprehensive enough to include even orders which emerge after and embody the results of a judicial or quasi-judicial disposal by the Government. 1957 Mad 48 (51) [(S) A I R V 44 C 20] : 11 L R (1957) Mad 115 (DB). (An order noted on the file by the minister does not dispose of the revision. The section requires an order of the State Government in the sense in which the Constitution understands that expression. The minister’s order does not amount to an order of the Government in that sense.)

**Section 64A (Bihar) — Note 1**

[1] There is no repugnancy between S. 64A introduced by the Bihar Act and S. 64A inserted by the Central Act 100 of 1956. Hence the introduction of the latter provision has not resulted in the repeal of the former one. 1960 Pat 537 (539) [A I R V 47 C 181] (DB). (The two sections do not provide for the same

remedy by two different authorities. They on the other hand apply to different classes of cases.)

[2] Section 64A as inserted by the Bihar Amendment Act, 27 of 1950 does not create an unreasonable restriction on the right guaranteed to the citizens under Art. 19 (1) (g) of the Constitution. It is not therefore constitutionally void or ultra vires. 1957 Pat 340 (345) [(S) A I R V 44 C 107] (DB). (The section cannot be said to confer an arbitrary or unguided power to the State because it empowers the State to make an order as it thinks fit. The section being a part of the entire scheme for granting permits has to be read in the context of the other sections in the Act. When it is so read it becomes clear that the State Government has to exercise the power in a regulated manner and on the principles laid down in the Act.)

[3] Section 64A provides a machinery for revisional jurisdiction to revise all orders passed under the Motor Vehicles Act by any authority or officer subordinate to it. It, in substance, gives a residuary power to the State to see that no injustice is done to any citizen in the matter of his enjoying the right of freedom of trade granted to him in Art. 19 (1) (g) of the Constitution. Therefore, there is no substance in the contention that S. 64A enacted by the Bihar Legislature provides a second appellate Authority for hearing the application filed under the Motor Vehicles Act, 1939. 1957 Pat 340 (349) [(S) A I R V 44 C 107] (DB). (Hence the Government need not adopt the procedure of an appeal in disposing of the revision.)

[4] Where an application in revision against the order of the State Transport Authority is filed before the Transport Minister of the State the application as well as the order of the minister must be deemed to have been made under S. 64A (Bihar) only even though the application has stated erroneously that it had been made under S. 64A inserted by the Central Act 100 of 1956. 1960 Pat 537 (538) [A I R V 47 C 181] (DB).

[5] The Government has power under S. 64A to grant a permit to revision petitioner without cancelling any other permit. The fact that the permit so granted is in excess of the vacancies originally advertised by the R. T. A. does not render the order one falling beyond the scope of the revision brought before the Government. 1957 Pat 340 (348) [(S) A I R V 44 C 107] (DB).

[6] The power conferred by S. 64A (Bihar) being a quasi-judicial power has to be exercised in accordance with the principles of natural justice even though the section itself does not lay down any provision for a notice or an opportunity of hearing to be given to

**MADRAS**

In its application to the pre-reorganised State of Madras, excluding the transferred territories, section 64A newly inserted after section 64 was the same as that given under Andhra Pradesh.

—Madras Act XX of 1948, S. 12 [21-12-1948].

NOTE.—But by section 4 of Madras Act XXXIX of 1954 published in the Official Gazette of the State dated 2-2-1955, section 64A is omitted. This Madras Act XXXIX of 1954 is brought into force on and from 1-1-1956 by a notification as directed by section 1 (2) of that Act—See A. I. R. 1957 Mad. 48 (49, 50).

**65. Restriction of hours of work of drivers.**

(1) No person shall cause or allow any person who is employed by him for the purpose of driving a transport vehicle or who is subject to his control for such purpose to work—

(a) for more than five hours before he has had an interval of rest of at least half an hour ; or

(b) for more than nine hours in one day ; or

(c) for more than fifty-four hours in the week.

(2) The <sup>A</sup>[State Government] may by rule made under section 68 grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) The <sup>A</sup>[State Government] <sup>A</sup>[or, if authorized in this behalf by the <sup>A</sup>[State Government] by rules made under section 68, the <sup>A</sup>[State] or a Regional Transport Authority] may require persons employing any persons whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons so as to conform with those provisions, and may provide for the recording of the hours so fixed.

**Section 64A (Bihar) — Note 1 (contd.)**  
the parties concerned in the matter. 1957 Pat 340 (345) [(S) AIR V 44 C 107] (DB). (Appellate authority cancelling permit granted in favour of K and granting to R—Government in revision restoring the permit of K and cancelling permit of R—Absence of notice to R renders the order invalid.)

[7] Though the Government acting under this section is bound to give the person against whom it proposes to pass an order an opportunity of defending himself or of showing cause against that order it is not bound to give him a personal hearing or a hearing through a lawyer in every case. 1956 Pat 437 (439) [A I R V 43 C 105] : 34 Pat 429 (DB). (Question whether the omission to give a personal hearing violates the principles of natural justice depends on the particular facts of each case.)

[8] An order passed by the Government under S. 64A granting a permit to the applicant does not become invalid because no notice of the proceedings was given to another person who already holds a permit to ply buses on the same road. The latter has no right to be heard in the proceedings so long as the permit issued to him is not affected by the order passed. 1957 Pat 340 (347) [(S) A I R V 44 C 107] (DB).

[9] Section 12 (2) of the Limitation Act applies to the period of limitation prescribed by S. 64A (Bihar), of the Motor Vehicles Act and hence the period of limitation for preferring a revision against an appellate order which was not pronounced in Court but was only communicated to the parties would commence to run not from the date of the

order but from the date of its communication only. 1960 Pat 212 (212, 213) [AIR V 47 C 72] (DB).

[10] The period of limitation prescribed by S. 64A applies only to the filing of the application. It does not require the Government also to call for records and pass order within that period. 1957 Pat 340 (348) [(S) AIR V 44 C 107] (DB).

**Section 64A (Madras) (Repealed)**

**1. Effect of repeal.** — [1] After the Motor Vehicles (Madras Amendment) Act, 59 of 1954, which repealed S. 64A, came into force on 1-1-1956 in accordance with the notification issued by the Government under S. 1 (2) of the amendment the power under S. 64A ceased to be available to the government even for the purpose of dealing with the pending revision cases. 1957 Mad 48 (50) [(S) AIR V 44 C 20] : ILR (1957) Mad 115 (DB).

[2] Under S. 64A the authority empowered to act is the State Government and the manner in which it should act is by passing an order. An order can be called an order of the State Government only when it satisfies the requirements of the Constitution and an order noted by the minister on the file would not amount to an order of the State Government in that sense. Hence in spite of such a noting on the file before 1-1-1956 the revision should be regarded as pending on that date and therefore an order issued by the Government after that date is one without jurisdiction. 1957 Mad 48 (59) [(S) AIR V 44 C 20] : ILR (1957) Mad 115 (DB).



(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons in compliance with any rule made under sub-section (3).

(5) The State Government may prescribe the circumstances under which any period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 15 [3-4-1942].

## **66. Voidance of contracts restrictive of liability.**

Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

### **STATE AMENDMENT**

#### **SECTIONS 66A and 66B**

##### **BIHAR**

In its application to the State of Bihar, after section 66 *insert* the following sections, namely,—

**“66A. Power of State Government in respect of certain routes.**—(1) The State Government may, by notification, declare that a joint stock company in which the Central Government or the State Government or both have controlling interest will engage in the business of road transport either throughout the State or in such areas therein or on such routes or portions thereof as may be specified in the notification.

*Explanation.*—The power conferred by this sub-section may be exercised from time to time, as occasion requires.

(2) Notwithstanding anything contained in this Act, the State Government may, by notification,—

- (i) direct the appropriate Transport Authority that permits in respect of such areas or routes or portions thereof as may be specified in the notification may be granted to a joint stock company referred to in sub-section (1); and
- (ii) cancel any permit, or reduce the number of vehicles or routes covered by any permit, granted under the Act or class of such permits either generally or in any area specified in the notification :

Provided that no such notification cancelling any permit shall be issued before the expiry of a period of three months from the date of a notification declaring its intention to do so :

Provided further that when any such permit has been cancelled, the holder of the permit shall be entitled to such compensation as may be provided in the rules.

(3) The State Government may, by notification, prescribe that any provision of this Chapter and any rule made thereunder shall not apply, or shall apply with such modifications as it may consider necessary, to a permit granted or to a permit cancelled under sub-section (2).

**“66B. Bar to suit or proceedings.**—No order or direction issued under section 43A and no order made by any Transport Authority in pursuance of a notification issued under sub-section (2) of section 66A shall be called in question in any Court and no suit or other legal proceeding shall lie against the State Government or any Transport Authority for damages caused or likely to be caused by anything in good faith done or intended to be done by or under the provisions of the said sections.”

—Bihar Act XXVII of 1950, S. 14 [21-7-1950].

## **67. Power to make rules as to stage carriages and contract carriages.**

(1) A <sup>a</sup>[State Government] may make rules to regulate, in respect of stage carriages and contract carriages,—

\*[(a) \* \* \* \* \*]

(b) the conduct of passengers in such vehicles.

### **Section 67 — Note 1**

[1] The Regional Transport Authority has no power to fix the rates of fares in respect of stage carriages under the law as it stands at present. It can have such power only if the Act is amended or such a power is prescribed

by Rules made by the State Government empowering it to impose it as a condition of the permits issued to stage carriage owners. 1955 Cal 59 (61) [(S) AIR V 42 C 10] : 1 L R (1956) 2 Cal 870.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

- (a) authorise the removal from such vehicle of any person infringing the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger, by any police officer;
- (b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;
- (c) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor;
- (d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;
- (e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;
- (f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him;
- <sup>b</sup>[(ff) require a passenger to abstain from doing anything which is likely to obstruct or interfere with the working of the vehicle or to cause damage to any part of the vehicle or its equipment or to cause injury or discomfort to any other passenger;
- (fff) require a passenger not to smoke in any vehicle on which a notice prohibiting smoking is exhibited;]
- (g) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

[a] Clause (a) was omitted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 60 [w. e. f. 1-8-1957]. [b] Inserted, *ibid* [w. e. f. 16-2-1957].

## 68. Power to make rules for the purposes of this Chapter.

(1) A <sup>A</sup>[State Government] may make rules for the purpose of carrying into effect the provisions of this Chapter.

### Section 68 — Note 1

[1] The validity of S. 68 which confers an extensive rule making power on the State Government cannot be challenged as constituting an excessive or unconstitutional delegation of legislative functions by the legislature. 1957 Mad 387 (390) [(S) AIR V 44 C 118] : ILR (1957) Mad 461 (DB).

[2] A rule made by the Government cannot be struck down as ultra vires its powers under the section on the ground that it relates to a matter not enumerated under sub-s. (2). Sub-section (2) does not exhaust the scope of sub-s. (1). Its only effect is that with reference to the items included therein it is not necessary to examine further whether they come within the scope of the general provision in sub-s. (1). 1956 Mad 349 (350) [(S) AIR V 43 C 107] : ILR (1956) Mad 1272 \* 1960 All 209 (210) [AIR V 47 C 42]. (Rule 60 of the U. P. Motor Vehicles Rules is covered by the rule making power conferred by sub-s. (1) even though it relates to a matter not falling under items enumerated under sub-s. (2).) \* (157) 61 Cal W N 590 (597).

[3] A rule made by the Government which has reference to the purpose for which the Act had been enacted cannot be said to be in excess of the rule making power of the Government. 1958 Madh-Pra 193 (195) [AIR V 45 C 66] : ILR (1957) Madh-Pra 117 (DB). (Rule 49 of the C. P. and Berar Motor Vehicles Rules 1940 is therefore not ultra vires.) \* 1960 All 209 (210) [AIR V 47 C 42]. (Rule 60 of the U. P. Motor Vehicles Rules is directed towards the effective carrying out of the purpose of sub-s. (2) of S. 58) \* 1957 Mad 387 (391) [(S) AIR V 44 C 118] : ILR (1957) Mad 461 (DB). (Rule 134A of the Madras Motor Vehicles Rules carries into effect the provisions of S. 44 (5) of the Act.) \* 1957 Punj 145 (146) [AIR V 44 C 63]. (Case decided before the amendment of the section by deletion of Cl. (f)—Rule 420 (c) of the Punjab Motor Vehicles Rules framed under that clause was held to be valid because it carried out the purpose of the Act.) \* 1956 Andh-Pra 232 (233) [AIR V 43 C 65] (DB) \* 1956 Mad 349 (351) [(S) AIR V 43 C 107] : ILR (1956) Mad 1272. (Rule 160B of the Madras Motor Vehicles Rules which authorises the

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely :—

(a) the period of appointment and the terms of appointment of and the conduct of business by Regional and <sup>A</sup>[State] Transport Authorities and the reports to be furnished by them ;

**Section 68 — Note 1 (contd.)**

R.T.A., to fix rates for carriage of mails by buses carries into effect the provisions of S. 47 (1) (a) and hence is not *ultra vires*.)

[4] Rule 268 of the Madras Motor Vehicles Rules is one framed under the plenary rule making power referred to in sub-s. (1) and is within the scope of the powers conferred by the section. 1953 S C 79 (82) [AIR V 40 C 22]; 1953 SCR 290. (The fixing or alteration of bus stands is not foreign to the purpose of Chapter IV to carry out which the Government has plenary powers under the section to make rules.)

[5] The power conferred by S. 68, to make rules, is solely for the purpose of carrying out the provisions of the Act and it must therefore follow that the rules can be used only for the same purpose. A rule must not be made or used to obstruct and prevent those provisions from being operative. 1948 Mad 400 (407) [AIR V 35 C 197] (DB). (Hence it must be held that R. 150 of the Madras Motor Vehicles Rules is not within the rule making power under S. 68 and is therefore invalid and *ultra vires*.)

[6] The State Government cannot issue executive orders which in effect modify the provisions of the Act regarding grant of permits by Transport Authorities where no scheme under Chapter IV has been submitted to it by the State Transport Authority and has been approved by it. Hence the Kerala State Government had acted in excess of its powers in framing R. 6 by which it has disallowed the private bus services from overlapping State Transport Services for more than four miles. (1957) 1957 Ker L T 975 (976, 977).

[7] The transport authority has no power under the Act to make rules having the force of law. 1955 NUC (Tra-Co) 3475 [AIR V 42]. (In this case it was held, therefore that a notification issued by the Transport authority under R. 162 of the Travancore Motor Vehicles Rules imposing a limit upon the number of permits that may be granted for a route did not prevent the authority from receiving applications for permits even in excess of such number.)

[See also 1957 J & K 9 (10) [AIR V 44 C 7] : 1957 Cri L Jour 446 (DB). (Case decided before amendment of Act—Under S. 68 Government alone can make rules under S. 56—Registering authority not authorised by rules framed by Government to impose restrictions under S. 56 (b) (iv) — Registering authority restricting vehicles carrying railway goods and mail from carrying trade goods—Held the permit-holder cannot be convicted under S. 123 for a contravention of the restrictions.)]

[8] The Regional Transport Authority has no power to fix the rates in respect of the State carriages under the Motor Vehicles Act.

1955 Cal 59 (61) [(S) AIR V 42 C 10] : ILR (1956) 2 Cal 879.

[9] The Madras Motor Vehicles Rules, 1940, made by the Governor at a time when he had taken over the powers of the executive Government by a proclamation under the Government of India Act, 1935, were laws in force before the commencement of the Constitution and therefore will continue in force even after the Constitution until altered by a competent authority. 1956 Andh Pra 129 (132) [(S) AIR V 43 C 45] (DB).

**Sub-section (2) (a)—Rules to enable delegation of functions**

[10] Reading S. 68 along with S. 44 (5), it is clear that the Government has power to make the rules enabling the Regional Transport Authority to delegate its power to renew a permit under Ss. 58 and 63 to its secretary. 1959 Mys 17 (20) [AIR V 48 C 5] : ILR (1958) Mys 421 (DB).

[11] Rule 140A (v) (3) of the Madras Motor Vehicles Rules, which empowers the Central Board to delegate to its secretary the power to grant or refuse interim stay pending appeal is not invalid. 1957 Andh Pra 830 (830, 831) [(S) AIR V 44 C 252].

[12] Under Rule 146 the certificate of registration of a motor vehicle for which permit to ply the vehicle on a particular route is to be granted has to be produced within a month of the sanction or such longer period as may be notified. Where, therefore, the Transport Authority has delegated authority to its Secretary to issue the permit, should the certificate of registration be produced within the notified period of three months from the date of sanction, the permit endorsed and issued by the Secretary two years thereafter is void and of no effect. 1953 Trav-Co 392 (393) [AIR V 40 C 155].

[13] Section 60 of the Act being a special provision governing suspension of a permit by an authority who issued it, overrides the general rule (R. 134-A (xi)) empowering a subordinate to cancel a permit issued even by a superior officer. 1956 Andh-Pra 232 (234) [AIR V 43 C 65] (DB). (Hence the order of the secretary suspending, under R. 134-A (xi) of the Madras Motor Vehicles Rules, a permit granted by the Regional Transport Authority is illegal.) \* 1957 Andh-Pra 1027 (1031) [(S) AIR V 44 C 332] : ILR (1957) Andh-Pra 643 (FB). (The secretary to whom the power to cancel or suspend a permit is delegated cannot, therefore, by reason of R. 134-A (xi), validly cancel or suspend a permit issued by the Transport Authority.)

[But see 1957 Mad 387 (389, 390) [(S) AIR V 44 C 118] : ILR (1957) Mad 461 (DB).]

[14] The Government has no power under S. 68 read with S. 44 to make a rule directly delegating the functions of the transport

- (b) the conduct and hearing of appeals that may be preferred under this Chapter, <sup>a</sup>[the fees to be paid in respect of such appeals and the refund of such fees ;]
- (c) the forms to be used for the purposes of this Chapter, including the forms of permits ;
- (d) the issue of copies of permits in place of permits <sup>b</sup>[lost, destroyed or mutilated] ;
- (e) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed ;
- <sup>c</sup>[(f) \* \* \* \* \*]
- <sup>d</sup>[(g) the fees to be paid in respect of applications for permits, duplicate permits and plates ;]
- <sup>a</sup>[(gg) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter ;]
- (h) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have become void or have been revoked ;
- <sup>e</sup>[(hh) the conditions subject to which, and the extent to which, a permit granted in another State shall be valid in the State without counter-signature ;]
- <sup>f</sup>[(i) the conditions subject to which, and the extent to which, a permit granted in one region shall be valid in another region within the State without counter-signature ;]
- (ii) the conditions to be attached to permits for the purpose of giving effect to any agreement such as is referred to in clause (iv) of sub-section (1) of section 43 ;]
- (j) the authorities to whom, the time within which and the manner in which appeals may be made ;
- (k) the construction and fittings of, and the equipment to be carried by stage and contract carriages, whether generally or in specified areas ;
- (l) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried ;
- (m) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers ;

#### Section 68 — Note 1 (contd.)

authorities. Under these provisions it can only frame rules to enable those authorities themselves to delegate their functions. 1953 Assam 199 (200) [A I R V 40 C 81] : 11 L R (1953) 5 Assam 282 (DB). (Hence the note added by the Governor to cl. (c) of R. 84 of the Assam Motor Vehicles Rules was in excess of the rule making powers of the Government.)

#### Sub-s. (2) (b).

[15] It is not competent for the State Government to make a rule under the section to create a new right of appeal not recognised by S. 64. 1953 Mad 321 (324) [A I R V 40 C 109] (DB). (Hence a right of appeal against a refusal to vary the condition of a permit cannot be inferred even impliedly from R. 208 of the Madras Motor Vehicles Rules. Because that Rule has applied the procedure prescribed for dealing with applications for grant of permit to applications for variation of conditions it cannot be said that the refusal to vary the conditions amounts to a refusal of

permit and therefore is appealable under S. 64.)

#### Sub-s. (2) (c).

[16] The mere fact that a rule made under sub-s. (2) (c) to prescribe a form for applications for permits has mentioned additional particulars and provided columns in the form for them cannot give them the status of particulars prescribed by rules under the Act. 1960 Mys 33 (36) [A I R V 47 C 7] (DB). (Rule 156 of the Madras Motor Vehicles Rules merely prescribes the application form and the particulars mentioned by it but not falling under S. 48 cannot be regarded as particulars referred to in S. 546 (f).)

#### Sub-s. (2) (j).

[17] Rule 144, framed by the Madras Government under S. 68, which fixes the quorum of the appellate authority, read with R. 147, is not *ultra vires* the power of the Government to frame rules under S. 68. (158) 1958 Andh L T 1074 (1076) + 1960 Andh-Pra 268 (270, 271) [A I R V 47 C 82] (DB).

- (n) the safe custody and disposal of property left in a stage or contract carriage ;
- (o) [regulating the painting or marking of transport vehicles and the display of advertising matter thereon, and in particular prohibiting the painting or marking of transport vehicles] in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails ;
- (p) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes ;
- (q) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters ;
- (r) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place ;
- [(s) the requirements which shall be complied with in the construction or use of any duly notified stand or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof, the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition ;
- (ss) the regulation of motor-cab ranks ;]
- (t) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicles used for the conveyance of passengers for hire or reward ;
- [(u) authorising specified persons to enter at all reasonable times and inspect all premises used by permit holders for the purposes of their business ;]
- (u) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare ;
- (v) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried ;
- 1[(w) the licensing of and the regulation of the conduct of agents or canvassers who engage in the sale of tickets for travel by public service vehicles or otherwise solicit custom for such vehicles ;]
- [(ww) the licensing of agents engaged in the business of collecting, forwarding and distributing of goods carried by public carriers ;]

#### Section 63 — Note 1 (contd.)

*Sub-s. (2) (r).*

[18] The expression 'duly notified stand' in sub-s. (2) (r) is not defined in the Act but it is reasonable to presume that it must be one notified by the Transport authority and none other. 1953 S C 79 (82) [A I R V 40 C 22] : 1953 S C R 290. (The provisions of S. 270, Madras Municipalities Act do not affect the power of the transport authority to regulate traffic control or impose restrictions upon the licence of any stand and there is also no warrant for the presumption that the notified stand must be one which has been notified by the Municipality.)

[19] Rule 288 of the Madras Motor Vehicles Rules is not repugnant to Art. 19 (1) (g). So also an order passed under that rule which prohibits the use of a bus stand only by buses plying on out-station journeys and not entirely by all buses including those engaged in town service does not offend that provision. 1953 S C 79 (82) [A I R V 40 C 22] : 1953 S C R 290. (The restriction would no doubt diminish the income of the owner of the stand but that cannot be a reason for holding that there is an infringement of Art. 19 (1) (g). The restriction being one placed in view of public convenience is reasonable and valid.)

- (x) the inspection of transport vehicles and their contents and of the permits relating to them ;
- (y) the carriage of persons other than the driver in goods vehicles ;
- \*[(yy) the specification of the municipal limits of a town or of any other area as a free zone within which goods may, subject to the prescribed conditions, be carried anywhere by a motor vehicle covered by a public carrier's permit ;]
- (z) the records to be maintained and the returns to be furnished by the owners of transport vehicles ; and
- (za) any other matter which is to be or may be prescribed.

[a] *Added* by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 16 [3-4-1942].  
 [b] *Substituted* for "lost or destroyed", *ibid.*, 1956 (C of 1956), S. 61 [w. e. f. 16-2-1957].  
 [c] Clause (f) was *omitted*, *ibid.*, S. 61 [w.e.f. 1-8-1957]. [d] *Substituted* for the original clause, *ibid.*, S. 61 [w. e. f. 16-2-1957]. [e] *Inserted*, *ibid.* [f] *Substituted* for clause *v*, *ibid.* [g] *Substituted* for "prohibiting the painting or marking of a stage or a contract carriage", *ibid.* [h] *Substituted* for clause (s), *ibid.* [i] *Substituted* for the original clause by Act XX of 1942, S. 16 [3-4-1942].

### STATE AMENDMENTS

#### ANDHRA PRADESH

In its application to the pre-reorganised State of Andhra Pradesh, excluding the transferred territories, in sub-section (2) of section 68 :—

- (a) after clause (b) *insert* the following :

"(bb) the fees to be paid in respect of applications under section 64A;"  
 —Mad. Act XLIV of 1949 [24-1-1950].

- (b) after clause (h) *insert* the following :

"(hh) the compensation to be paid to the holder of a permit granted or renewed in respect of a transport vehicle, for the cancellation thereof;"

—Mad. Act XX of 1948, S. 13 [21-12-1948].

#### BIHAR

In its application to the State of Bihar, in sub-section (2) of section 68—

- (a) at the end of clause (z) *omit* the word 'and'; and

- (b) after the said clause so amended *insert* the following clause :

"(z1) the compensation to be paid to the holder of a permit granted or renewed in respect of a transport vehicle for the cancellation thereof; and".

—Bih. Act XXVII of 1950, S. 15 [21-7-1950].

#### MADHYA PRADESH

MAHAKOSHAL.—In its application to the Mahakoshal region of the State of Madhya Pradesh, in sub-section (2) of section 68 after clause (h) *insert* the following clause :

"(hh) the compensation to be paid to a permit-holder for cancellation of a permit in respect of a transport vehicle;"

—C. P. & Berar Act III of 1948, S. 13 [16-1-1948].

#### MADRAS

In its application to the pre-reorganised State of Madras, excluding the transferred territories, the amendments made in sub-section (2) of section 68 are the same as those given under Andhra Pradesh.

—Mad. Acts XX of 1948, S. 13 and XLIV of 1949, S. 2.

#### MAHARASHTRA

In its application to Bombay and Vidarbha areas of the State of Maharashtra, the amendment made in sub-section (2) of section 68 is the same as the one given under Madhya Pradesh.

—Bom. Act VII of 1947, S. 13 [23-3-1947] and C. P. & Berar Act III of 1948, S. 13.

#### PUNJAB

In its application to the pre-reorganised State of Punjab, excluding the transferred territories, clause (hh) *inserted* in section 68 (2) is the same as the one given under Andhra Pradesh.

—E. P. Act XXVIII of 1948, S. 12 [12-7-1948].

#### WEST BENGAL

In its application to the State of West Bengal, clause (hh) *inserted* in section 68 (2) is the same as the one given under Madhya Pradesh.

—W. B. Act XIX of 1951, S. 14 [13-7-1951].

#### Section 68 — Note 1 (contd.)

Sub-s. (2) (z-a).

[20] Clause (za) of sub-s. (2) which says that a rule may be made with respect to any other matter which is to be or may be pres-

cribed shows the existence of residuary power vested in the rule making authority. 1953 S C 79 (82) [AIR V 40 C 22] : 1953 S C R 290.

## SECTION 68A UTTAR PRADESH

## STATE AMENDMENT

In its application to the State of Uttar Pradesh, after section 68 *insert* the following section, namely:—

**"68A. Powers of State Government in respect of certain routes.**—(1) If, for better organization of motor transport, it is, in the opinion of the State Government, necessary or expedient to do so, it may, notwithstanding anything contained in this Act, by notification in the Official Gazette, direct the appropriate Transport Authority in respect of such route or part of route in Uttar Pradesh as may be specified therein—

- (a) that such permits as may be specified therein may be granted to a joint stock company;
- (b) that any permit or class of permit be cancelled; and
- (c) that no application for the grant of a new permit or for the renewal of any permit and no appeal from any person aggrieved by the cancellation of a permit under clause (b) shall be entertained or heard or decided by any Transport Authority.

(2) No order made or deemed to be made by any Transport Authority in pursuance of a direction given under sub-section (1) shall be called in question in any Court and no suit or other legal proceeding shall lie against the State Government or any Transport Authority for any damages caused or likely to be caused by anything in good faith done or intended to be done by or under this section.

(3) The State Government may by notification in the Official Gazette prescribe that any provision of sections 42 to 68 and any rule made thereunder shall not apply or shall apply with such modification as it may consider necessary to a permit granted or to be granted under clause (a) of sub-section (1) or to a permit cancelled under clause (b) of sub-section (1)."

—U. P. Act XI of 1948, S. 3 [21-2-1948].

## CHAPTER IVA\*

### OBJECTS AND REASONS

[NOTE. — "The Motor Vehicles Act, in its present form, contains no provisions to facilitate the introduction or expansion of nationalised transport services. Some States have either amended the Act with local effect only, or promoted separate legislation to implement their schemes of nationalisation of road transport. It is, however, desirable to have a uniform law throughout the country in this respect. It is, therefore, proposed to insert a new Chapter IVA, consisting of nine sections [namely, sections 68A to 68-I], to deal

with the grant of monopoly permits to State transport undertakings and to cover other ancillary matters. The new Chapter contains provisions for payment of compensation at a minimum specified rate for cancellation of permits or modification of the terms thereof. No provision has been proposed for the acquisition of assets by the State transport undertakings or the payment of compensation therefor and the question has been left entirely to the State Government."

—S. O. R.]

### Chapter IV-A — Note I

[1] Chapter IV-A is not merely regulatory of the procedure for carrying on business of road transport by the State; it enables the State Transport undertaking, subject to the provisions of the scheme, to exclude private operators and to acquire a monopoly, partial or complete, in carrying on transport business in a notified area or on notified routes. 1960 S C 1073 (1078) [AIR V 47 C 193].

[2] Chapter IV-A had been competently enacted by the Parliament under entry 21 read with entry 35 of the Concurrent List in the Constitution. The plea that the Parliament had no power to enact it, based on the phraseology used in Art. 19 (6) of the Constitution to the effect that the State intending to carry on the trade or business must itself enact the law, is unsustainable. The expression "State" in Art. 12 of the Constitution includes the Government and Parliament of India as well as the Government and Legislature of each of the States. Under Entry 21 the Parliament being competent to legislate for creating commercial or trading monopolies there is nothing in the Constitution which deprives it of the power to create a commercial or trad-

ing monopoly in the constituent States. 1960 S C 1073 (1078) [AIR V 47 C 193] + 1959 Andh-Pra 292 (298) [AIR V 46 C 87] : ILR (1958) Andh-Pra 437 (DB).

[3] Chapter IV-A is not a colourable legislation which in fraud of Art. 31 of the Constitution enables the State to take a transfer of ownership without providing for compensation for the property transferred under the guise of cancellation of the permit. The cancellation of a permit and the granting of a permit to the State does not even involve a transfer of the permit from the one to the other and much less the transfer of any property that is to say the business or undertaking, of the former to the latter. In fact the entire assets of the business are left with the permit holder himself. Under Art. 31 of the Constitution no compensation need be provided where there is no transfer of ownership or right to possession of any property to the State and hence Chapter IV-A cannot be said to infringe that Article. 1959 S C 308 (317, 318) [AIR V 46 C 43] : 1959 Supp 1 S C R 319 + 1959 Andh-Pra 292 (298) [AIR V 46 C 87] : ILR (1958) Andh-Pra 437 (DB).



## SPECIAL PROVISIONS RELATING TO STATE TRANSPORT UNDERTAKINGS

**68A. Definitions.**

In this Chapter, unless the context otherwise requires,—

- (a) "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward ;
- (b) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,—
  - (i) the Central Government or a State Government ;
  - (ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 ;
  - (iii) the Delhi Road Transport Authority established under section 3 of the Delhi Road Transport Authority Act, 1950 ;
  - (iv) any municipality or any corporation or company owned or controlled by the State Government.

[a] Chapter IVA, containing sections 68A to 68-1\* was inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 62 [w. e. f. 16-2-1957].

## STATE AMENDMENT

**HYDERABAD**

In its application to the Hyderabad areas of the States of Andhra Pradesh and Bombay (now Maharashtra), after Chapter IV of the Act *insert* the following Chapter, namely,—

## "CHAPTER IV-A

## SPECIAL PROVISIONS RELATING TO STATE TRANSPORT UNDERTAKINGS

Section 68A is the same as in the Central Act above, except cl. (b) which is as follows :

"(b) "State transport undertaking" means the Road Transport Department of the State providing road transport service."—Hyd. Act XLV of 1956, S. 4 [5-10-1956.]

**68B. Chapter IVA to override Chapter IV and other laws.**

The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law.

## STATE AMENDMENT

**HYDERABAD**

In its application to the Hyderabad areas in the States of Andhra Pradesh and Bombay (now Maharashtra), section 68B is the same as in the Central Act given above.—Hyd. Act XLV of 1956 [5-10-1956].

**Section 68A — Note 1**

[1] The State Transport Department of the Hyderabad State which came into being under Chapter IV-A inserted in the Central Act in its application to the State of Hyderabad by the Motor Vehicles (Hyderabad Amendment) Act of 1956 and which on the reorganisation of States became the Road Transport Department Andhra Pradesh State is clearly a State Transport undertaking under the Central Act inasmuch as it falls within the definition of a State Transport undertaking contained in Chapter IV-A of that Act. 1959 S C 308 (318, 319) [AIR V 46 C 43] : 1959 Supp 1 S C R 319 + 1959 Andh-Pra 292 (300) [AIR V 46 C 87] : ILR (1958) Andh-Pra 437 (DB). (Apparent difference in the definitions in the two Acts is not sufficient to impute different connotations.)

1959 Andh Pra 292 (300) [AIR V 46 C 87] : ILR (1958) Andh Pra 437 (DB). (The section has not the effect of cutting down or abridging a right to make further legislation. The only effect of the section is that if any legislation contains an inconsistent provision a question will arise to be decided viz. which of the two should prevail. Hence, it is not repugnant to Art. 372. Nor does it offend Arts. 245 and 246 because it does not delegate any legislative power of repeal to a subordinate authority or even repeal any provision of law.)

[2] The provisions in Chapter IV-A are, as the heading would indicate, only additional provisions which relate to State Transport Undertaking, and are not the only ones which apply to such undertakings. S. 68-B clearly supports this conclusion. As S. 68-B makes it clear the provisions of Chapter IV and also any other law for the time being in force are kept intact, but they are over-ridden in their application to State Transport undertaking only to the extent of inconsistency between them and the provisions of Chapter IV-A.

**Section 68B — Note 1**

[1] Section 68B is neither repugnant to Art. 372 nor to Arts. 245 and 246 of the Constitution and is therefore not unconstitutional.



**68C. Preparation and publication of scheme of road transport service of a State transport undertaking.**

Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct.

**STATE AMENDMENT****HYDERABAD**

In its application to the Hyderabad areas in the States of Andhra Pradesh and Bombay (now Maharashtra), section 68C is as follows namely, —

"68C. *Preparation and publication of scheme of road transport service of a State Transport Undertaking.* — Whenever the State Transport Undertaking is of opinion that, it is necessary in the public interest that road transport service in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking whether to the exclusion complete or partial of other persons or otherwise, they may prepare a scheme giving particulars of the nature, of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the Government may direct" — Hyd. Act XLV of 1956, S. 4 [5-10-1956].

**Section 68B — Note 1 (contd.)**

1960 Bom 278 (282) [AIR V 47 C 80] : ILR (1960) Bom 87 (DB).

[3] It is open to the State Transport Authority to apply for permits under Chapter IV, along with other operators, for routes in respect of which no scheme has been prepared and published under Chapter IV-A. The right of that authority to do so has not been taken away by Chapter IV-A either expressly or impliedly. 1960 Pat 506 (507) [AIR V 47 C 167] (DB).

**Section 68C — Note 1**

[1] Section 68C is merely an enabling section and there is nothing contained in that section which makes it compulsory or mandatory for a State transport undertaking to prepare a scheme. 1960 Bom 68 (91) [AIR V 47 C 24].

[2] It is the duty of the State undertaking when it prepares a scheme under S. 68C to decide whether it will take up a whole route or a portion thereof. If it decides to take a portion of the route, it should specify that portion only in the scheme. The scheme must be capable of being carried out all at once and not piecemeal. 1960 S C 350 (352) [AIR V 47 C 58] : 1960-2 S C R 130.

[3] A scheme cannot be said to violate the provisions of Art. 14 on the ground that it covers only some of the several routes in an area on which stage carriages are being plied for public transport. 1960 S C 1073 (1076) [AIR V 47 C 193]. (Such a scheme must be regarded as one for the notified routes and not for the entire area.) \* 1959 Andh Pra 292

(305) [AIR V 46 C 87] : ILR (1958) Andh Pra 437 (DB).

[4] An express recital in the scheme by the State Transport Authority of its formation of the opinion that the scheme is necessary in the interests of the public is not a condition of the validity of the scheme. Such an expression of opinion is manifest from the very fact of its proposing a scheme under the section for providing for road transport undertaking. 1959 S C 308 (319) [AIR V 46 C 43] : 1959 Supp 1 S C R 319 + 1959 Andh Pra 292 (301) [AIR V 46 C 87] : ILR (1958) Andh Pra 437 (DB). (The functions contemplated in Chapter IV-A are essentially of an executive nature and hence the supervisory jurisdiction of the High Court will not extend to such acts.)

[5] The fact that no materials were given in the draft scheme to show as to how efficient, adequate, economical and co-ordinated road services would be provided by the State transport undertaking does not affect its validity. 1960 Pat 575 (579) [AIR V 47 C 198] (DB).

[6] The failure on the part of State Government to make rules under S. 68-I does not affect the validity either of the draft scheme under S. 68-C or of the approved scheme under S. 68-D. 1960 Pat 575 (579) [AIR V 47 C 198] (DB).

[7] The provisions of the Act do not authorise the Government to initiate the scheme and then hear the objections and representations, thus constituting itself a judge in its own cause in derogation of the principles of natural justice. 1959 S C 1376 (1380) [AIR V 46 C 194] : 1960-1 S C R 580.

[8] The Chief Minister of the State is not a part of the department of the Government

**68D. Objection to the scheme.**

(1) Any person affected by the scheme published under section 68C may, within thirty days from the date of the publication of the scheme in the Official Gazette, file objections thereto before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify the scheme.

(3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government.

**STATE AMENDMENT****HYDERABAD**

In its application to the Hyderabad areas of the States of Andhra Pradesh and Bombay (now Maharashtra), section 68D is the same as in the Central Act given above, subject to the following modifications, namely,—

- (a) for the words "State Government" wherever they occur in the Central Act the word "Government" is substituted; and
- (b) in the Proviso to sub-section (3) in the Central Act after the words "inter-State route" the words "or to any route covering more than one hundred and fifty miles and serving places connected by railway" are inserted.—Hyd. Act XLV of 1956, S. 4 [5-10-1956].

**Section 68C — Note 1 (contd.)**

constituted as a statutory undertaking under the Act and therefore, whatever may be the policy of the Government in the matter of nationalisation of bus transport, he cannot be said to have initiated the scheme under S. 68C. Hence in the absence of proof that he has expressed his bias for the scheme the hearing by him of the objections to the scheme is not in violation of the principles of natural justice which place an embargo on a person being a judge in his own cause. 1959 S C 1376 (1380, 1381, 1382) [AIR V 46 C 194] : 1960-1 S C R 580.

[9] Where the Court sets aside only the approval of a scheme by the Government on the ground that its enquiry was not consistent with the principles of natural justice and not the scheme itself it is not necessary to prepare a scheme afresh and notify it under S. 68C. All that the Court contemplates by its order is that there should be a fresh enquiry into the objections already submitted as well as the objections that may still be received. 1960 Andh Pra 214 (216) [AIR V 47 C 72] : ILR (1959) Andh Pra 585 (DB).

**Section 68D — Note 1**

[1] Where the authority invested with the power to consider the objections gives an opportunity to the objectors to be heard in the matter and deals with the objections in the light of the object intended to be secured by the scheme, the ultimate order passed by the authority is not open to challenge in Supreme Court either on the ground that another view may possibly have been taken or that detailed reasons have not been

given for upholding or rejecting the contentions raised by the objectors. 1960 S C 1073 (1079) [AIR V 47 C 193]. (No appeal lies to the Supreme Court against the order passed by the State Government approving or modifying the scheme.)

[2] In approving or modifying a scheme the minister or an officer of the Government who has been invested with power to hear objections under the section acts judicially and the approval or the modification cannot be called in question merely on a presumption of bias based on the fact of his being a limb of the Government. It can be challenged only on reliable evidence showing such bias. 1960 S C 1073 (1079) [AIR V 47 C 193] + 1960 Andh Pra 214 (219, 220) [AIR V 47 C 72] : ILR (1959) Andh Pra 585 (DB). (Mere possibility of bias is not sufficient. There must be reasonable grounds for assuming that there is a real likelihood of there being bias.)

[3] Where the Chief Minister holding an enquiry received representations from the State undertaking after the closure of the hearing and in the absence of the petitioners (private operators), the enquiry cannot be attacked on this ground, if the representation filed on behalf of the undertaking did not contain any material which was not argued in the presence of the petitioners. 1960 Andh Pra 214 (220, 221) [AIR V 47 C 72] : ILR (1959) Andh Pra 585 (DB).

[4] Apart from the question whether the State Government acting under S. 68-D is under an obligation to set out the reasons in support of its conclusions, where there is an order adducing the reasons in support of the conclusions from the fact that a copy of this was not furnished to the petitioners but what

**68E. Cancellation or modification of scheme.**

Any scheme published under sub-section (3) of section 68D may at any time be cancelled or modified by the State transport undertaking and the procedure laid down in section 68C and section 68D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be modified as if the modification proposed were a separate scheme.

**STATE AMENDMENT****HYDERABAD**

In its application to the Hyderabad areas of the States of Andhra Pradesh and Bombay (now Maharashtra), section 68E is the same as in the Central Act given above.—Hyd. Act XLV of 1956, S. 4 [5-10-1956].

**68F. Issue of permits to State transport undertakings.**

(1) Where, in pursuance of an approved scheme, any State transport undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter IV.

**Section 68D — Note 1 (contd.)**

was given to them was the operative part of the order approving the scheme, it does not follow that the order was not supported by reasons. 1960 Andh Pra 214 (221) [AIR V 47 C 72] : ILR (1959) Andh Pra 585 (DB).

[5] An order under the section which discloses that the main points arising in the matter had received the careful attention of the authority and that his opinions were formed on the material on record and the attendant circumstances and also sets out the various considerations which weighed with him in arriving at his decision cannot be challenged on the ground that all the objections were not considered by the authority from four standpoints, namely, whether the scheme initiated by the State Transport undertaking would provide an efficient, adequate, economical and properly co-ordinated transport service. 1960 Andh Pra 214 (221) [AIR V 47 C 72] : I L R (1959) Andh Pra 585 (DB).

[6] The order approving the scheme can only be issued in the name of the Governor—But the decision is that of the Chief Minister and both of them, i. e., the decision and the order notified in the official gazette, are to be read as the integral part of the same order. 1960 Andh Pra 214 (221) [AIR V 47 C 72] : ILR (1959) Andh Pra 585 (DB).

[7] State Road Transport Corporation preparing scheme under S. 68-C of Motor Vehicles Act—State Government approving same with certain modifications—Tabular part of approved scheme referring to "certain routes or portions thereof" — Preamble of draft scheme however referring to the routes and different parts thereof—*Held* that the draft scheme and the approved scheme and the order of the Minister of Transport on the draft scheme were parts of a single proceeding and so the tabular statement of the approved scheme should be considered in the light of the preamble of the draft scheme. Therefore the word 'or' in tabular statement of the approved scheme should be interpreted in a conjunctive sense. Hence the intention of the State Road Transport Corporation must be held to be to

take over the entire routes mentioned, by virtue of the scheme and not merely portions thereof. The scheme therefore was not void for vagueness. 1960 Pat 575 (578) [AIR V 47 C 198] (DB).

[8] Where the Chief Minister in charge of the Motor Transport of the State had directed the Secretary to Government, Home Department, to hear the objections, there is nothing to prevent the Secretary from giving a personal hearing to the parties, when the ultimate responsibility vested in the Government and it is the Government that approved of the scheme finally. Hearing of objections of parties is not a judicial or quasi-judicial act but only an administrative one and hence such acts are not amenable to certiorari. 1959 Andh Pra 292 (303, 305) [AIR V 46 C 87] : I L R (1958) Andh Pra 437 (DB).

**Section 68E — Note 1**

[1] Section 68-E is inapplicable to a case where the approval of the scheme alone is quashed. Its impact is only on the cancellation of the scheme by the State Transport undertaking or the Corporation as the case may be. 1960 Andh Pra 214 (217) [AIR V 47 C 72] : ILR (1959) Andh Pra 585 (DB).

**Section 68F — Note 1**

[1] Where a scheme prepared by the State Transport undertaking is approved and published by the State Government, it is the duty of the undertaking to carry out the scheme and in pursuance of it to apply for permits under S. 68F (1). There is no difficulty for the undertaking to apply for permits relating to the entire scheme at the same time. Where the undertaking decides to take up a portion of the route only it should specify that portion in the scheme. 1960 S C 350 (353) [AIR V 47 C 58] : 1960-2 S C R 130.

[2] It is not legally obligatory on a State Transport undertaking to mechanically commence the services on all the proposed routes on one and the same date. 1960 Pat 575 (581) [AIR V 47 C 198] (DB).

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, by order,—

- (a) refuse to entertain any application for the renewal of any other permit;
- (b) cancel any existing permit;
- (c) modify the terms of any existing permit so as to—
  - (i) render the permit ineffective beyond a specified date;
  - (ii) reduce the number of vehicles authorised to be used under the permit;
  - (iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the Regional Transport Authority under sub-section (1) or sub-section (2).

### STATE AMENDMENT

#### HYDRABAD

In its application to the Hyderabad areas of the States of Andhra Pradesh and Bombay (now Maharashtra), section 68F is the same as in the Central Act given above, subject to the modification that sub-section (3) reads as follows, namely,—

“(3) No appeal shall lie against any action taken or order passed, by the Regional Transport Authority under sub-section (1) or sub-section (2). The Government, may however, revise the order of the Regional Transport Authority if the same is not in accordance with the approved scheme.”—Hyd. Act XLV of 1956, S. 4 [5-10-1956].

#### Section 68F — Note 1 *contd.*

[3] A scheme proposed by a statutory authority and approved by the Government can be validly implemented by another authority which is its successor. Hence, where after the approval of the scheme proposed by its State Transport Department the Government creates a Road Transport Corporation and entrusts to it the functions of its State Transport department, the Corporation as the successor of that department is entitled to implement that scheme. 1959 S C 308 (328) [AIR V 46 C 43] : 1959 Supp 1 S C R 319+ 1959 Andh Pra 292 (301) [AIR V 46 C 87] : 1 LR (1958) Andh Pra 437 (DB).

[4] Section 68F entitles the State Transport undertaking to a permit for these vehicles automatically notwithstanding anything contained in Chapter IV of the Act in respect of a notified route. The Regional Transport Authority is bound under this provision to issue a permit to them. It is therefore a question of fulfilling a legal formality and does not affect the right of the State Transport Undertaking to ply its buses provided they are sanctioned by the scheme. 1959 All 197 (204) [AIR V 46 C 48].

[5] The State Transport Authority applying for stage carriage permits under S. 68 F (1) must also comply with the provisions of Ss. 45, 46 and 57. Hence a permit cannot be validly granted to it on an application which has not been made within the time prescribed by S. 57 (2). 1960 S C 350 (352) [AIR V 47 C 58] : 1960-2 S C R 130.

[6] Section 68F (2) does not refer to a new application made by any person for grant of a permit, and it, at least in this respect, does not overlap the provisions of S. 47. 1960 Bom 278 (283) [AIR V 47 C 80] : ILR (1960) Bom 87 (DB).

[7] A combined reading of S. 68 F (2) and

R. 11 of Andhra Motor Vehicles Rules makes it clear that the order contemplated under the said sub-section can be made by the Regional Transport Authority only after giving due notice to the persons likely to be affected by the said order. Where the Regional Transport Authority passed the order and communicated the same to the persons affected and gave them only a day for complying with that order, which in the circumstances could not be considered to be due notice within the meaning of the rule, the Regional Transport Authority did not strictly comply with the provisions of the rule. 1959 S C 1376 (1383) [AIR V 46 C 194] : 1960-1 S C R 580.

[8] The omission to serve notices under R. 11 of the Andhra Pradesh Motor Vehicles Rules renders an order passed under sub-s. (2) only irregular and not one without jurisdiction. 1960 Andh Pra 214 (222) [AIR V 47 C 72] : ILR (1959) Andh Pra 585 (DB).

[9] Section 68 F (2) (c) (iii) clearly contemplates that where there is partial overlapping of the route of the operator over the notified route, the Regional Transport Authority has power to curtail the length of the route covered by the permit in so far as such permit overlaps the notified route. The power of the R. T. A. to curtail the route under S. 68 F (2) (c) (iii) is co-extensive with the power of refusal of permit under S. 68 F (2) (a). 1960 Pat 575 (580) [AIR V 47 C 198] (DB).

[10] The Regional Transport Authority carries out duties which are administrative but in certain respects of a quasi-judicial nature and therefore when it finds that an order has been made inadvertently overlooking the fact that the law has meanwhile changed, it can review it and rectify the mistake. 1959 Cal 543 (547) [AIR V 46 C 148].

[11] Chapter IV-A cannot be read as containing the only provisions under which the

**68G. Principles and method of determining compensation.**

(1) Where, in exercise of the powers conferred by clause (b) or clause (c) of sub-section (2) of section 68F, any existing permit is cancelled or the terms thereof are modified, there shall be paid by the State transport undertaking to the holder of the permit compensation the amount of which shall be determined in accordance with the provisions of sub-section (4) or sub-section (5), as the case may be.

(2) Notwithstanding anything contained in sub-section (1), no compensation shall be payable on account of the cancellation of any existing permit or any modification of the terms thereof, when a permit for an alternative route or area in lieu thereof has been offered by the Regional Transport Authority and accepted by the holder of the permit.

(3) For the removal of doubts, it is hereby declared that no compensation shall be payable on account of the refusal to renew a permit under clause (a) of sub-section (2) of section 68F.

(4) Where, in exercise of the powers conferred by clause (b) or sub-clause (i) or sub-clause (ii) of clause (c) of sub-section (2) of section 68F, any existing permit is cancelled or the terms thereof are modified so as to prevent the holder of the permit from using any vehicle authorised to be used thereunder for the full period for which the permit would otherwise have been effective, the compensation payable to the holder of the permit for each vehicle affected by such cancellation or modification shall be computed as follows :—

(a) for every complete month or part of a month exceeding Two hundred fifteen days of the unexpired period of the permit : rupees

(b) for part of a month not exceeding fifteen days of the One hundred unexpired period of the permit : rupees

Provided that the amount of compensation shall, in no case, be less than four hundred rupees.

(5) Where, in exercise of the powers conferred by sub-clause (iii) of clause (c) of sub-section (2) of section 68F, the terms of an existing permit are modified so as to curtail the area or route of any vehicle authorised to be used thereunder, the compensation payable to the holder of the permit on account of such curtailment shall be an amount computed in accordance with the following formula, namely :—

$$\frac{Y \times A}{R}$$

*Explanation.* — In this formula,—

(i) “Y” means the length or area by which the route or area covered by the permit is curtailed ;

(ii) “A” means the amount computed in accordance with sub-section (4) ;

(iii) “R” means the total length of the route or the total area covered by the permit.

**Section 68F — Note 1 (contd.)**

Government can ply stage carriages and as taking away the right of the Government to obtain permits under S. 42 (1) for the buses it intends to run. 1960 S C 801 (804, 805) [AIR V 47 C 134]. (Under S. 68F (1) the State Government is entitled as a matter of right to the necessary permits to run its buses.)+ 1960 Bom 278 (282) [AIR V 47 C 80] : ILR (1960) Bom 87 (DB). (No scheme prepared by corporation under S. 68C—Still it can apply for permits under S. 47.)+ 1960 Pat 506 (507) [AIR V 47 C 167] (DB). (Routes not notified under S. 68C—State Transport can still apply for permits under Chapter IV.)

**Section 68G — Note 1**

[1] The fact that this section provides for payment of compensation to the permit-holder whose permit is cancelled before the expiry of its term cannot irresistibly lead to the conclusion that the legislature proceeded on the basis that the cancellation of a permit involved a transfer of property from the permit-holder to the State and that Chapter IV-A is a piece of colourable legislation in fraud of Art. 31 of the Constitution. 1959 S C 308 (317, 318) [AIR V 46 C 43] : 1959 Supp 1 S C R 319+ 1959 Andh Pra 292 (299) [AIR V 46 C 87] : ILR (1958) Andh Pra 487 (DB).

## OBJECTS AND REASONS

"The Committee feel that the rates of compensation provided in the Bill are not adequate. They have accordingly increased the rates of compensation payable—

(i) for every complete month or part thereof exceeding 15 days of the unexpired period of a permit from Rs. 100/- to Rs. 200/- ;

(ii) for any part of a month not exceeding 15 days of such unexpired period, from Rs. 50/- to Rs. 100/- ; and

(iii) the minimum compensation payable to the holder of a permit for each vehicle has been raised from Rs. 200/- to Rs. 400/-."

—J. C. R.

## STATE AMENDMENT

## HYDERABAD

In its application to the Hyderabad areas of the States of Andhra Pradesh and Bombay (now Maharashtra), section 68G is the same as in the Central Act given above, subject to the modification, namely, clauses (a) and (b) of sub-section (4) and the Proviso thereto read as follows :

- |   |                    |
|---|--------------------|
| "(a) for every complete month or part of a month exceeding fifteen days of the unexpired period of the permit ; | One hundred rupees |
| (b) for part of a month not exceeding fifteen days of the unexpired period of the permit ;                      | Fifty rupees       |

Provided that the amount of compensation shall, in no case, be less than two hundred rupees."

—Hyd. Act XLV of 1956, S. 4. [5-10-1956.]

**68H. Payment of compensation.**

The amount of compensation payable under section 68G shall be paid by the State transport undertaking to the person or persons entitled thereto within one month from the date on which the cancellation or modification of the permit becomes effective :

Provided that where the State transport undertaking fails to make the payment within the said period of one month, it shall pay interest at the rate of 3½ per cent. per annum from the date on which it falls due.

## STATE AMENDMENT

## HYDERABAD

In its application to the Hyderabad areas of the States of Andhra Pradesh and Bombay (now Maharashtra), section 68H is the same as in the Central Act given above.

—Hyd. Act XLV of 1956, S. 4. [5-10-1956.]

**68I. Power to make rules.**

(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- the form in which any scheme or approved scheme may be published under section 68C or sub-section (3) of section 68D ;
- the manner in which objections may be filed under sub-section (1) of section 68D ;
- the manner in which objections may be considered and disposed of under sub-section (2) of section 68D ;
- the manner of service of orders under this Chapter ;
- any other matter which has to be, or may be, prescribed.

## STATE AMENDMENT

## HYDERABAD

In its application to the Hyderabad areas of the States of Andhra Pradesh and Bombay (now Maharashtra), section 68I is the same as in the Central Act given above except that for the words "State Government" the word "Government" is substituted.

—Hyd. Act XLV of 1956, S. 4. [5-10-1956.]

## Section 69I — Note 1

[1] Though power is given under S. 68-I to State Government to make rules that section does not impose a duty upon the State Government to make rules. Hence a failure on the part of the State Government to make rules

under the section does not affect the legal validity either of the draft scheme under S. 68-C or of the approved schemes under S. 68-D. 1960 Pat 575 (579) [AIR V 47 C 198] (DB).

## CHAPTER V

## CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF MOTOR VEHICLES.

**69. General provision regarding construction and maintenance.**

Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

**70. Power to make rules.**

(1) A State Government may make rules<sup>a</sup> regulating the construction, equipment and maintenance of motor vehicles and trailers.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances, namely:—

- (a) the width, height, length and overhang of vehicles and of the loads carried;
- (b) seating arrangements in public service vehicles and the protection of passengers against the weather;
- (c) the size, nature and condition of tyres;
- (d) brakes and steering gear;
- (e) the use of safety glass;
- (f) signalling appliances, lamps and reflectors;
- (g) speed governors;
- (h) the emission of smoke, visible vapour, sparks, ashes, grit or oil;
- (i) the reduction of noise emitted by or caused by vehicles;
- (j) prohibiting or restricting the use of audible signals at certain times or in certain places;
- (k) prohibiting the carrying of appliances likely to cause annoyance or danger;
- (l) the periodical testing and inspection of vehicles by prescribed authorities;
- (m) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited; and
- (n) the use of trailers with motor vehicles.

[a] For the Motor Vehicles (Manufacture in Bond) Rules, 1956, made under section 100A of the Sea Customs Act, 1878 (VIII of 1878), see S. R. O. 2593 dated 8-11-1956 in Gaz. of Ind., 1956, Pt. II-Sec. 3, page 1872.

## CHAPTER VI

## CONTROL OF TRAFFIC

**71. Limits of speed.**

(1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force :

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

**Section 71 — Note 1**

[1] The provisions of S. 71 (2) are mandatory. Hence a speed limit cannot be enforced unless it has been imposed in strict compliance with the requirements of sub-section (2). 1943 Mad 391 (391) [AIR V 30] : 44 Cri L Jour 566. (Prior notification in Gazette is a condition precedent to enforceability of the restriction.) \* 1959 Mys 144 (145) [AIR V 46 C 56] : ILR (1958) Mys 225 : 1959 Cri L Jour 750. (Placing of speed restriction warn-

ing under S. 75 not proved—Driver cannot be convicted for excessive speeding.) \* 1943 Mad 217 (218) [AIR V 30] : 44 Cri L Jour 377. (Decision to impose restriction in the absence of notification in Gazette cannot be enforced even if the driver has knowledge of the decision.)

[2] Fixing of the speed by the Board is the publication in the official Gazette, which, in the case of Madras Presidency, means the Fort St. George Gazette. Where, therefore, there



[3] The presumption under sub-s. (4) does not apply to the case of contravention of the provisions of sub-s. (3) (b). Hence to punish the owner in such cases his knowledge of the contravention by the driver must be proved. ('50) ILR (1950) All 784 (785)+1960 Mys 212 (213) [AIR v 47 C 69] : 1960 Cri L Jour 1114+1949 All 11 (12) [AIR v 38 C 2] : (1949) All 254 : 50 Cri L Jour 20.



(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

[a] Substituted for "heavy transport vehicles", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 64 [w. e. f. 16-2-1957]. [b] Proviso was omitted, *ibid.* [c] The word "or" was omitted, *ibid.* [d] Clause (c) was omitted, *ibid.*

### 73. Power to have vehicle weighed.

\*[(1)] Any person authorised in this behalf by the State Government may, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of '[2 kilometres] from any point on the forward route or within a distance of '[10 kilometres] from the destination of the vehicle for weightment; and if on such weightment the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may, by order in writing, direct the driver to convey the vehicle or trailer to the nearest place, to be specified in the notice, where facilities exist for the storage of goods, and not to remove the vehicle or trailer from that place until the laden weight '[\* \*] has been reduced or the vehicle has otherwise been treated so that it complies with section 72.

\*[(2) Where any excess goods are removed from any goods vehicle or trailer for storage under sub-section (1) such person as may be authorised in this behalf by the State Government shall cause a notice in writing to be served on the owner of the vehicle or trailer, as the case may be, requiring him to remove the goods within the time to be specified in the notice and if the owner of the vehicle or trailer refuses or fails to remove the goods within the time specified, the authorised person may sell the goods by public auction and the balance of the sale proceeds, after deducting therefrom the charges for the storage of the goods and the costs incidental to the sale, shall be paid to the owner of the vehicle or trailer, as the case may be :

Provided that where the excess goods removed are of a perishable nature, the sale can be held immediately after causing the notice to be served on the driver of the vehicle or trailer.]

[a] Section 73 was re-numbered as sub-section (1) thereof by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 65 [w. e. f. 16-2-1957]. [b] Substituted for "one mile" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 4 [w. e. f. 1-1-1961]. [c] Substituted for "five miles", *ibid.* [d] The words "or axle weight" were omitted by Act C of 1956, S. 65. [e] Inserted, *ibid.*

### OBJECTS AND REASONS

"It has come to notice that action taken against drivers and owners of goods vehicles, under section 124 read with section 73 of the Act, has not proved sufficiently deterrent to

curb the tendency to overload goods vehicles. The amendment [by the introduction of sub-section (2)] is designed to effectively check this growing tendency."—S.O.R."

### 74. Power to restrict the use of vehicles.

The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interests of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of

#### Section 74 — Note 1

[1] A notification that no motor vehicle other than certain cars shall ply on certain roads without the previous written permission of the authority is invalid because it is ultra vires the powers conferred by the section. 1952 Nag 111 (114) [AIR V 39] : ILR (1952) Nag 69.

[2] The exceptions and conditions subject to

which the power of prohibition or restriction may be exercised under this section must also proceed from the same consideration which necessitated the prohibitions or restrictions themselves. The exceptions and conditions cannot be arbitrary. 1952 Nag 111 (114) [AIR V 39] : ILR (1952) Nag 69.

any specified class of motor vehicles or the use of trailers either generally in a specified area or on a specified road <sup>a</sup>[and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 75 at suitable places :

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.]

[a] *Added by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 66 [w. e. f. 16-2-1957].*

## **75. Power to erect traffic signs.**

(1) The <sup>a</sup>[State Government] or any authority authorised in this behalf by the <sup>a</sup>[State Government] may cause or permit traffic signs to be placed or erected in any public place for the purpose of <sup>a</sup>[bringing to public notice any speed limits fixed under sub-section (2) of section 71 or any prohibitions or restrictions imposed under section 74, or generally for the purpose of] regulating motor vehicle traffic.

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the <sup>a</sup>[State Government] or any authority empowered in this behalf by the <sup>a</sup>[State Government] may make or authorise the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the <sup>a</sup>[State Government] may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs erected prior to the commencement of this Act by any competent authority shall for the purposes of this Act be deemed to be traffic signs erected under the provisions of sub-section (1).

(4) A <sup>a</sup>[State Government] may, by notification in the <sup>a</sup>[Official Gazette], empower any District Magistrate or Superintendent of Police <sup>b</sup>[(or, in the Presidency-towns, the Chief Presidency Magistrate or the Commissioner of Police)] to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which is in his opinion so similar in appearance to a traffic sign as to be misleading.

<sup>c</sup>[(5) No person shall wilfully remove, alter, deface, or in any way tamper with, any traffic signs placed or erected under this section.

(6) If any person accidentally causes such damage to a traffic sign as renders it useless for the purpose for which it is placed or erected under this section, he shall report the circumstances of the occurrence to a police officer or at a police station as soon as possible, and in any case within twenty-four hours of the occurrence.

(7) For the purpose of bringing the signs set forth in the Ninth Schedule in conformity with any international convention relative to motor traffic to which the Central Government is for the time being a party, the Central Government may, by notification in the Official Gazette, make any addition or alteration to any such sign and on the issue of any such notification, the Ninth Schedule shall be deemed to be amended accordingly.]

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 67 [w. e. f. 16-2-1957].* [b] *Inserted, *ibid.*, 1942 (XX of 1942), S. 17 [3-4-1942].* [c] *Inserted by Act C of 1956, S. 67 [w. e. f. 16-2-1957].*

**76. Parking places and halting stations.**

The <sup>A</sup>[State Government] or any authority authorised in this behalf by the <sup>A</sup>[State Government] may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

**77. Main roads.**

A <sup>A</sup>[State Government] or any authority authorised in this behalf by the <sup>A</sup>[State Government] may, by notification in the <sup>A</sup>[Official Gazette] or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Ninth Schedule, designate certain roads as main roads for the purposes of the regulations contained in the Tenth Schedule.

**78. Duty to obey traffic signs.**

<sup>A</sup>[(1)] Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by <sup>b</sup>[a mandatory traffic sign] and in conformity with the driving regulations set forth in the Tenth Schedule, and shall comply with all directions given him by any police officer for the time being engaged in the regulation of traffic in any public place.

<sup>A</sup>[(2)] In this section "mandatory traffic sign" means a traffic sign included in Part A of the Ninth Schedule, or any traffic sign of similar form (that is to say, consisting of or including a circular disc displaying a device, word or figure and having a red ground or border) erected for the purpose of regulating motor vehicle traffic under sub-section (1) of section 75.]

[a] Section 78 was re-numbered as sub-section (1) thereof by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 18 [3.4.1942]. [b] Substituted for "a traffic sign included in Part A of the Ninth Schedule", *ibid.* [c] Added, *ibid.*

**Section 76 - Note 1**

[1] A notification issued by the prescribed authority under S. 76 which merely stated that motor vehicles could stand only at the stand specified and nowhere else cannot be construed as prohibiting the vehicles from being taken to and kept in the garage of the owners for repairs. Hence it cannot be said that the notification has in anyway interfered with the fundamental right of the owner under Article 19 (1) (g) of the Constitution to carry on the business of plying stage carriages or running the motor garage for the repairs of motor vehicles. 1959 J & K 141 (143) [AIR V 46 C 59].

[2] Section 76 in so far as it relates to public service vehicles empowers the authority to make provision only for parking places and halting stations. It confers no power on it for determining the place of a permanent bus stand, that is to say a bus stand which is a sort of radiating centre of all the bus traffic of the town. Hence an order declaring a bus stand in a town whether private or public as unsuitable for use is ultra vires of the powers of the authority under S. 76. 1951 Mad 419(421) [AIR V 38 C 127]; ILR (1951) Mad 571 (DB). *Held* further that the order in this case was liable to be set aside also on the ground that it was passed without notice to the owner of the bus stand.)

[3] A bus stand was serving as a common terminus for two different routes. The R.T.A., in exercise of the powers conferred on them by the Rules framed under the Act shifted the

terminus of one of the routes with the result that the buses operating on that route began to ply further up on the road which before the change was exclusively a part of the other route. But the R.T.A. effected the change without giving notice of the alteration to the operators on the other route. In these circumstances it was held that the alteration would not be allowed to stand because the R.T.A., which was a quasi-judicial body was bound by the principles of natural justice to give notice to those operators even though the Rules themselves did not expressly lay down any such obligation on them. (1956) ILR (1956) Andh 319 (323).

[4] The transport authority in consulting the municipality before passing an order whereby it altered the starting places and termini of all public service vehicles from a privately owned bus stand to the municipal bus stand acts only within the scope of its powers even though the rule framed by the Government has not made such consultation obligatory. 1953 S C 79 (83) [AIR V 40 C 22]; 1953 SCR 290. (The order cannot also be said to be mala fide because the Collector as the head of the District and acting in his executive capacity presided over the meeting at which the order was passed and also opened the municipal bus stand.)

**Section 78 - Note 1**

[1] The Police Officer referred to in S. 78 is the same Police Officer as is defined in S. 3 (b), Hyderabad City Police Act. A traffic const-

**79. Signals and signalling devices.**

The driver of a motor vehicle shall on the occasions specified in the Eleventh Schedule make the signals specified therein :

Provided that the signal of an intention to turn to the right or left or to stop may be given by a mechanical or an electrical device of a prescribed nature affixed to the vehicle.

**80. Vehicles with left hand control.**

No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

**81. Leaving vehicle in dangerous position.**

No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

**82. Riding on running board.**

No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

**83. Obstruction of driver.**

No person driving a motor vehicle shall allow any person to stand or sit or anything to be placed in such a manner or position as to hamper the driver in his control of the vehicle.

**84. Stationary vehicles.**

No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

**Section 78 — Note 1 (contd.)**

able appointed under rules under the City Police Act, is therefore, a Police Officer & S. 78 invests him with the authority to control the traffic. 1955 Hyd 259 (260) [AIR V 42 C 76] : ILR (1955) Hyd 142 : 1955 Cri L Jour 1588 (1) (DB).

[2] Any sign with which traffic may be controlled is included within the meaning of the mandatory signs. 1955 Hyd 259 (260) [AIR V 42 C 76] : ILR (1955) Hyd 142 : 1955 Cri L Jour 1588 (1) (DB).

[3] Before a charge of not complying with the directions of mandatory signs can be brought home to the driver it must be proved that the mandatory signs alleged to have been disobeyed were issued by a competent authority. 1943 Mad 61 (61, 62) [AIR V 30] : 44 Cri L Jour 208. (Charge of offence under S. 78 read with S. 112 for exceeding speed limit within the municipal area—No proof adduced by prosecution that the Municipal Commissioner had authority to fix speed limit—Held that accused cannot be convicted.)

[4] Where a signal to slow down is given and the person to whom the signal is given is made aware of it that there is a danger, the driver must slow down, to such an extent as to be able to stop practically instantaneously should the necessity arise. It is not for the driver to speculate as to the reason why the signal is given. It is the person giving a signal who alone knows and he must be the sole judge of the necessity of giving the signal. 1933 Nag 177 (178) [AIR V 20] : 34 Cri L Jour 1260.

**Section 82 — Note 1**

[1] A conductor in charge of the bus travelling on the running board is not liable under S. 82. The prohibition in S. 82 is not against the conductor or the driver of the motor vehicle but only against others. 1954 Mad 263 (263) [AIR V 41 C 108] : 1954 Cri L Jour 301.

### — Pillion riding.

No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the cycle behind the driver's seat.

## 86. Duty to produce licence and certificate of registration.

(1) The driver <sup>a</sup>[and the conductor, if any,] of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination.

(2) The owner of a motor vehicle <sup>a</sup>[other than a vehicle registered under section 39], or in his absence the driver or other person in charge of the vehicle, shall on demand by a registering authority or any person authorised in this behalf by the State Government produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in section 35.

(3) If the licence or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in <sup>b</sup>[India] which he specifies to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to a driver driving as a paid employee, or to the driver of a transport vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 68 [w. e. f. 16-2-1957].* [b] *Substituted for "the States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].*

### Section 86 -- Note I

[1] The demand for licence can be made under sub-section (1) only when the accused is found driving a motor vehicle in a public place and not otherwise. (55) 1955 Raj L W 503 (503).

[2] Failure to produce the driving licence on demand by the Police Officer is an offence and not merely non-carrying of it on person. Where, therefore, there is no indication that a demand was made by police to produce the licence, a person cannot be convicted. 1932 Lah 383 (364) [AIR V 19] : 33 Cri L Jour 646. (Case decided under the Act of 1914.)

[3] No person is a driver unless driving. Further, it is only a police officer who can demand the licence and a Magistrate's order requiring the driver to attend a Magistrate's house or Court with his licence is illegal. 1927 All 478 (479) [AIR V 14] : 28 Cri L Jour 492: 49 All 754. (Case decided under the Act of 1914.)

[4] The conviction for a failure to comply with sub-s. (1) is not sustainable in the absence of proof that police officer who demanded the licence was in uniform at the relevant time. 1960 J & K 139 (140, 141) [AIR V 47 C 59] : 1960 Cri L Jour 1453 (DB). (A plea of guilty by the accused cannot make good the defect because it amounts only to the admission of the acts alleged and not an offence as defined by the statute.)

[5] A person not in possession of his driving

licence while driving his vehicle cannot be prosecuted and punished under S. 3 unless he has also failed to produce the licence within the time prescribed by sub-section (3) of the section. (57) 1957 Cri L Jour 86 (88) (Pat).

[6] There is no authority for the proposition that a motor-car which carries mails, and also carries passengers, is exempt from the operation of the ordinary rules about licence for drivers and those restricting the number of passengers to be carried under the permit. 1927 Bom 154 (155) [AIR V 14] : 28 Cri L Jour 397 (DB). (Case decided under the Act of 1914.)

[7] Unless it is specifically found by the Magistrate on the evidence adduced by the prosecution that the person who demanded the registration certificate was an authorised person the conviction under sub-section (2) cannot be sustained. Hence the conviction based on the mere affirmation in the complaint must be set aside as invalid. 1960 J & K 139 (141) [AIR V 47 C 59] : 1960 Cri L Jour 1453.

[8] A failure to produce the registration certificate on a demand made by a police officer falling below the rank of officers authorised by the State Government in that behalf does not amount to an offence punishable as a contravention of sub-section (2). (55) 1955 Raj L W 503 (503).

**87. Duty of driver to stop in certain cases.**

(1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary—

- (a) when required to do so by any police officer in uniform, or
- (b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or
- (c) when the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle was or was not the cause of the accident or damage,

and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 116, give his name and address to that person.

(3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

**88. Duty of owner of motor vehicle to give information.**

The owner of a motor vehicle the driver <sup>a</sup>[or conductor] of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the <sup>A</sup>[State Government], give all information regarding the name and address of and the licence held by the driver <sup>a</sup>[or conductor] which is in his possession or could by reasonable diligence be ascertained by him.

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 69 [w. e. f. 16-2-1957].

**89. Duty of driver in case of accident and injury to a person.**

When any person is injured as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

- (a) take all reasonable steps to secure medical attention for the injured person, and, if necessary, convey him to the nearest hospital, unless the injured person or his guardian, in case he is a minor, desires otherwise;
- (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twentyfour hours of the occurrence.

**Section 87 — Note 1**

[1] Police Officer stopping vehicle need not be one engaged in regulating traffic. 1930 Mad 445 (445) [AIR V 17]: 31 Cri L Jour 639.

[2] In order to bring home the charge under S. 37 (1) (a) to the accused the prosecution must prove by evidence that the police officer who signalled the accused to stop was in uniform at the time. A mere mention in the charge that the police officer was in uniform is not enough for the purpose. 1949 Mad 424 (425) [AIR V 36 C 187]: 50 Cri L Jour 556 \* 1951 Trav-Co 215 (216) [AIR V 38 C 85]: 52 Cri L Jour 1075 (DB).

**Section 88 — Note 1**

[1] An owner can be punished for not giving any information required under this sec-

tion only when the information sought is possessed by him or is such that it could be collected by him by exercise of reasonable diligence. Thus he cannot be punished for not giving information regarding a person who drove his car long ago because such information cannot be said to come under either of the heads above mentioned. ('55) 1955 All L Jour 607 (608).

**Section 89 — Note 1**

[1] The person in charge of the car, though he may not be the owner, to whose orders the driver is in fact submitting at the time of accident or immediately thereafter, is amenable to this section. 1928 All 261 (262) [AIR V 15]: 29 Cri L Jour 357 (DB).

[2] Clause (b) read with R. 27 (c) of the

**90. Inspection of vehicle involved in accident.**

When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the <sup>A</sup>[State Government] may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be, and may remove the vehicle for examination :

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle and the vehicle shall be returned without unnecessary delay.

**91. Power to make rules.**

(1) The <sup>A</sup>[State Government] may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for —

- (a) the nature of the mechanical or electrical signalling devices which may be used on motor vehicles ;
- (b) the removal and the safe custody of vehicles including their loads which have broken down or which have been left standing or have been abandoned on roads ;
- (c) the installation and use of weighing devices ;
- <sup>A</sup>[(cc) the maintenance and management of godowns for the storage of goods removed from over-loaded vehicles and the fees, if any, to be charged for the use of such godowns ;]
- (d) the exemption from all or any of the provisions of this Chapter of Fire Brigade vehicles, ambulances and other special classes of vehicle, subject to such conditions as may be prescribed ;
- (e) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use ;
- (f) prohibiting the driving down hill of a motor vehicle with the gear disengaged either generally or in a specified place ;
- (g) prohibiting the taking hold of or mounting of a motor vehicle in motion ;
- (h) prohibiting the use of foot-paths or pavements by motor vehicles ;

**Section 89 — Note 1 (contd.)**

Madras Motor Vehicles Rules applies only where injury is caused to a member of the public or a public property by an accident in which the motor vehicle is involved. It does not apply where a minor injury is suffered by a passenger in the bus as for instance caused by the accidental breakage of the window panes of the bus. ('58) 1958 Mad L Jour (Cri) 235 (236).

[3] The petitioner was driving his car when on the way the car went out of control and jumped over a culvert, the parapet of which was only nine inches high, and fell into a channel. As a result of the accident, the front axle of the car was bent and some chunam was knocked off on the eastern side of the culvert. Those who were in the car received slight injuries; but they were able to return to their homes in the same car—*Held*, that the incident was not an accident within the meaning of R. 27 (c) of the Madras Rules. 1928 Mad 364 (364, 365) [AIR V 15] : 51 Mad 504 : 29 Cri L Jour 461 (DB).

[4] The words "if any person is injured" in R. 32 of the U. P. Rules was held to govern the rest of the Rule so that the driver of per-

son in charge of the motor vehicle had to report the accident only if any person was injured. 1929 All 750 (750) [AIR V 16] : 51 All 996 : 30 Cri L Jour 1085.

**Section 91 — Note 1**

[1] Rule 166 of Orissa Motor Vehicles Rules of 1940 which is a statutory Rule and therefore has statutory force prescribes a very strict standard of care on the part of a driver when he is travelling backwards. It imposes a peremptory duty on him to satisfy himself that the ground to the rear is clear and that no one would be endangered or unduly inconvenienced by the operation. In the circumstances of a case it may even become necessary for him to get down from the car and examine the position to the rear every time before he makes an attempt at backing the vehicle. ('51) 17 Cut L Tim 359 (364) (DB). (Non-observance of that duty would amount to culpable negligence.)



- (i) generally, the prevention of danger, injury, or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic; and
- (j) any other matter which is to be or may be prescribed.

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 70 [w. e. f. 16-2-1957].*

## CHAPTER VII

### MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING \*[INDIA]

#### **92. Power of Central Government to make rules.**

(1) The Central Government may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely :—

- (a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of \*[India] to any place outside India or to persons temporarily proceeding out of \*[India] to any place outside India and desiring to drive a motor vehicle during their absence <sup>b</sup>[from India];
- (b) prescribing the conditions subject to which motor vehicles brought temporarily into \*[India] from outside India by persons intending to make a temporary stay in \*[India] may be possessed and used in \*[India]; and
- (c) prescribing the conditions subject to which persons entering <sup>a</sup>[India] from any place outside India for a temporary stay in \*[India] may drive motor vehicles in \*[India].

<sup>a</sup>[(1A) For the purpose of facilitating and regulating the services of motor vehicles operating between India and any other country contiguous to it under any reciprocal arrangement and carrying passengers or goods or both by road for hire or reward, the Central Government may, by notification in the Official Gazette, make rules with respect to all or any of the following matters, namely :—

- (a) the conditions subject to which motor vehicles carrying on such services may be brought into India from outside India and possessed and used in India;
- (b) the conditions subject to which motor vehicles may be taken from any place in India to any place outside India;
- (c) the conditions subject to which persons employed as drivers and conductors of such motor vehicles may enter or leave India;
- (d) the grant and authentication of travelling passes, certificates or authorisations to persons employed as drivers and conductors of such motor vehicles;
- (e) the particulars (other than registration marks) to be exhibited by such motor vehicles and the manner in which such particulars are to be exhibited;
- (f) the use of trailers with such motor vehicles;
- (g) the exemption of such motor vehicles and their drivers and conductors from all or any of the provisions of this Act [other than those referred to in sub-section (4)] or of the rules made thereunder;
- (h) the identification of the drivers and conductors of such motor vehicles;
- (i) the replacement of the travelling passes, certificates or authorisations, permits, licences or any other prescribed documents lost or defaced, on payment of such fee as may be prescribed;
- (j) the exemption from the provisions of such laws as relate to customs, police or health with a view to facilitate such road transport services;



(k) any other matter which is to be, or may be, prescribed.]

(2) No rule made under this section shall operate to confer on any person any immunity in any State from the payment of any tax levied in that State on motor vehicles or their users.

<sup>a</sup>[(3) \* \* \* \* \*]

(4) Nothing in this Act or in any rule made thereunder by a State Government relating to—

- (a) the registration and identification of motor vehicles, or
- (b) the requirements as to construction, maintenance and equipment of motor vehicles, or
- (c) the licensing and the qualifications of drivers <sup>e</sup>[and conductors] of motor vehicles

<sup>e</sup>[shall apply—

- (i) to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) or under sub-section (1A) apply ; or
- (ii) to any conductor of a motor vehicle to whom any rules made under sub-section (1A) apply.]

[a] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule [1-4-1951]. [b] Substituted for "from British India", by A. C. A. O., 1948. [c] Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 71 [w. e. f. 16-2-1957]. [d] Sub-section (3) was omitted, *ibid.* [e] Substituted for "shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) apply," *ibid.*

#### OBJECTS AND REASONS

Section 92 (1A): "Section 92 of the Act and the Motor Vehicles International Rules, 1933, govern only the motor vehicles brought into India for a short stay or motor vehicles taken out of the country by persons going abroad

temporarily. They do not include provisions regulating commercial traffic between India and the countries contiguous to it. The amendment . . . . makes provision for this purpose." —S. O. R.

### CHAPTER VIII<sup>a</sup>

#### INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

#### 93. Definitions.

In this Chapter—

- <sup>b</sup>[(a) "authorised insurer" means an insurer in whose case the requirements of the Insurance Act, 1938, are complied with ;]
- (b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95 ; and includes <sup>c</sup>[a cover note complying with such requirements as may be prescribed, and] where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be ;
- <sup>e</sup>[(c) "reciprocating country" means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter.]

[a] Chapter VIII shall have effect on and from 29-10-1956 in all Part B States to which the Act extends except the State of Travancore-Cochin : see S. R. O. 2419 dated 22-10-1956 in Gaz. Ind., 1956, Pt. II-S. 3, page 1784.

Chapter VIII shall take effect in the State of Kerala only from such date as the Central Government may, by notification in the Official Gazette, appoint ; and until that Chapter so takes effect in that State, Chapter VII of the Travancore-Cochin Motor Vehicles Act, 1125, shall have effect in that State as if enacted in this Act.—*See Proviso to sub-section (2) of section 1.*

Chapter VII of the Travancore-Cochin Motor Vehicles Act, 1125 (X of 1125) deals with "Insurance of Motor Vehicles against Third Party Risk".

Section 3 of the Motor Vehicles (Amendment) Act, 1960 (V of 1960) is as follows, namely,—

"3. On the commencement of this Act,—

- (a) Chapter VII of the Travancore-Cochin Motor Vehicles Act, 1125 shall cease to have effect in the territories transferred to the State of Madras by section 4 of the States Reorganisation Act, 1956, except as respects things done or omitted to be done before such commencement; and
- (b) Chapter VIII of the principal Act shall cease to have effect in the territories transferred to the State of Kerala under section 5 of the States Reorganisation Act, 1956, except as respects things done or omitted to be done before such commencement."

The said Amendment Act V of 1960 came into force on 15th July, 1960 — see Gaz. of Ind., 1960, Extra., Pt. II-S. 3 (ii), page 403.

[b] Substituted for the original clause, by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 72 [w. e. f. 16-2-1957]. [c] Inserted, *ibid*.

### OBJECTS AND REASONS

*Amendments made in 1956.* — "The amendment in clause (a) is designed to remove any danger of conflict between section 93 of the Act and the provisions of the Insurance Act, 1938, under which a policy is not necessarily invalidated by temporary default in payment of deposits. . . . The amendment in clause (b) is aimed at bringing a cover note which has the same force, during its period of validity, as a policy of insurance, within the definition of 'certificate of insurance'." —S. O. R.

### 94. Necessity for insurance against third party risk.

(1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

*Explanation.* — A person driving a motor vehicle merely as a paid employee while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

\*[(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely :—

- (a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;
- (b) any local authority;
- (c) any State transport undertaking within the meaning of section 68A :

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

#### Section 94 — Note 1

[1] The transferee of a car can claim the benefits of the insurance which stood in the name of the transferor only if he acts in compliance with the provisions of Rule 14 (c) of the Rules for Insurance of Motor Vehicles (Notification No. D. Dis 17/50/Addl. Fin. (Ins) dated nil published in the Gazette extra ordinary dated 13th April 1951). 1960 Ker 341 (342) [AIR V 47 C 156] : 1960 Cri L Jour 1461.

[2] Where the insurer would continue to be liable under a policy after the transfer of the vehicle only if such transfer had been approved by him and the vehicle is transferred without his approval and is used it must be held that such user is in contravention of S. 94. 1956 Cal 555 (562) [AIR V 43 C 159] (DB) + 1960 Ker 341 (342) [AIR V 47 C 156] : 1960 Cri L Jour 1461.

**Explanation.** — For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case may be, and in relation to any local authority or State transport undertaking, means that Government which has control over that local authority or State transport undertaking.]

[a] Substituted for sub-section (2), by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 73 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

**Sub-sections (2) and (3).**—"In sub-section (2) of section 94, the phrase "by or on behalf of" is considered too wide and might be taken to include a contractor working for a Government, who should not be entitled to receive exemption. The phrase "or State owned Railway" can conveniently be included in the phrase "owned by any Government in India" and may, therefore, be omitted. Moreover, even in the case of Government owned vehicles, exemptions should be restricted to motor vehicles used for administrative and allied purposes and not for vehicles used for a commercial purpose or for the purposes of a commercial department. A conditional exemption, may, however, be given to vehicles owned by the Government or by a local authority or a State transport undertaking and used for commercial purposes. It is being provided that exemption may be given when a fund for meeting the liabilities arising out of the use of such vehicles is constituted by them. This provision is based on the lines of section 41 (2) of the Road Transport Corporations Act, 1950."

—S. O. R.

### 95. Requirements of policies and limits of liability.

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer \* [or by a co-operative society allowed under section 108 to transact the business of an insurer], and
- (b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not b[ \* \* \* ] be required—

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment \* [other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee—
  - (a) engaged in driving the vehicle, or
  - (b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
  - (c) if it is a goods vehicle, being carried in the vehicle], or
- (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or

#### Section 95 — Note 1

[1] A clause in the insurance policy that the insurer would be liable on the policy even in regard to the transferee of the vehicle only where the transfer had been made with his approval is not opposed to the provisions of the Act and hence it is a valid condition. 1956 Cal 555 (562) [AIR V 43 C 159] (DB).

[2] Section 95 (2) relates to insurance policy. It has nothing to do with user of a vehicle. When the insurance is as a private passenger vehicle the limit of the liability of the Com-

pany is prescribed in S. 95 (2) (c) irrespective of its user. 1959 Punj 297 (306) [AIR V 46 C 90] : ILR (1959) Punj 714 (DB).

[3] The question whether the certificate of insurance which is necessary for the purpose of rendering the policy effective for the purposes of Chapter 8 is a question of fact. 1959 Punj 297 (303) [AIR V 46 C 90] : ILR (1959) Punj 714 (DB). (Hence where no plea in regard to that question had been raised at the trial the plea cannot be raised at the appeal.)

alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :—

“(a) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all, including the liabilities, if any, arising under the Workmen’s Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;]

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;

(c) where the vehicle is a vehicle of any other class the amount of the liability incurred.

d[(3) \* \* \* \* \*

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance \*[\* \* \*] in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters: and different forms, particulars and matters may be prescribed in different cases.

\*[(4A) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.]

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 74 [w. e. f. 16-2-1957]. [b] The words “except as may be otherwise provided under sub-section (3)” were omitted, *ibid.* [c] *Substituted* for the former clause, *ibid.* [d] Sub-section (3) was omitted, *ibid.* [e] The words “or a cover note” were omitted, *ibid.*

## OBJECTS AND REASONS

*Amendments made in 1956*—Sub-section (1). Proviso (i) — “At present, it is discretionary with the State Governments to lay down that a policy of insurance should also cover liability arising under the Workmen’s Compensation Act, 1923. It is necessary to make this requirement compulsory.” Necessary provision is made in clause (i) of the Proviso.

Sub-section (2) (a) — “The amendment [by substitution of clause (a) in sub-section (2)] is intended to restrict the liabilities arising out of the Workmen’s Compensation Act to six employees carried in a vehicle.”

Sub-section (4A)—“The amendment [by the insertion of sub-section (4A)] is designed to check the prevailing mal-practice whereby insurance of motor vehicles is evaded by taking out a cover note at the time of payment of tax and not following it up with a regular policy of insurance thereafter. It is being made obligatory on an insurance company to notify to the prescribed authority whenever any such case comes to its notice.”

—S. O. R.

**\*[95A. Validity of policies of insurance issued in reciprocating countries.]**

Where, in pursuance of an arrangement between India and any reciprocating country, any motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance in force in that country, then, notwithstanding anything contained in section 95 but subject to any rules which may be made under section 111, such policy of insurance shall be effective throughout the route or area in respect of which the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 75 [w. e. f. 16-2-1957].

**OBJECTS AND REASONS**

Section 95A "is necessary to validate in India policies of insurance issued by the insurers of any reciprocating country in respect of motor vehicles which ply on any route

common to India and the country concerned in pursuance of a mutual arrangement between the two countries."

—S. O. R.

**96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.**

(1) If, after a certificate of insurance [\* \* \*] has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

**Section 96 -- Note 1**

[1] Section 96 has not the effect of denying equal protection of laws to the insurers and is therefore not violative of Art. 14 of the Constitution. 1959 Punj 297 (302, 303) [AIR V 46 C 90] : ILR (1959) Punj 714 (DB). (This section merely confers an additional right to the insurer namely that of defending himself even in the third party's action against an assured on certain specified grounds. His right to avoid liability on other grounds by taking appropriate action against the assured under the general law has, however, not been restricted by it.)

[2] The object and purpose of S. 96 is only to simplify the procedure for determining the parties' rights in a running down accident. Under the general law the injured person could file a suit only against the assured and could not implead the insurers. After the decision of this suit the assured becomes entitled to sue the insurers. These two independent suits arising out of the same accident involved considerable waste of time and money and therefore under S. 96 both the suits are combined in one without affecting in anyway the respective rights of the injured person and the insurers qua each other. In this context making the insurer liable while debarring him from raising in defence pleas which are

open to the assured cannot amount to a violation of natural justice. Hence the section is not unconstitutional. 1959 Punj 297 (302) [AIR V 46 C 90] : ILR (1959) Punj 714 (DB).

[3] Section 96 (2) deals with third party procedure where a person not a party to the suit would become liable to satisfy the decree passed in a run-down action. 1955 Punj 187 (188) [(S) AIR V 42 C 74] : I L R (1955) Punj 1174 (DB).

[4] Though the insurance company is not a necessary party in the suit for damages it may be made a party to the proceeding in order to enable it to watch its interest and see that there was no collusion between plaintiffs and the assured or to plead on the ground mentioned in sub-section (2) (a) and (b) of S. 96. 1957 Mad 236 (238) [AIR V 44 C 78].

[5] An insurer cannot be brought on record under sub-section (2) subject to the restriction that he could only watch the proceedings and not raise any defence. 1957 Mad 779 (780) [AIR V 44 C 256].

[6] An insurer who has a right to be made a party in an action by the injured person only under sub-section 2 of this section and not otherwise cannot plead in his defence all those grounds available at law including those the assured himself could have relied upon. His right to defence being a creation of the statute

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :—

- (a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or
- (b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :—
  - (i) a condition excluding the use of the vehicle—
    - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
    - (b) for organised racing and speed testing, or
    - (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is <sup>aa</sup>[a transport vehicle], or
    - (d) without side-car being attached, where the vehicle is a motor cycle; or

**Section 96 — Note 1 (contd.)**

he can defend the action only on the grounds specifically mentioned in the sub-section. 1959 S C 1331 (1333, 1334) [AIR V 46 C 187]; 1960-1 S C R 168; I L R (1959) Punj 1835 \* 1959 Punj 297 (302) [AIR V 46 C 90]; I L R (1959) Punj 714 (DB)\*1955 Punj 187 (188) [(S) AIR V 42 C 74]; ILR (1955) Punj 1174 (DB)\*1953 Bom 109 (110) [AIR V 40 C 35]; I L R (1953) Bom 296 (DB). (Hence the right of the insurer to be made a party to the suit is also restricted to the self same matters on which it can put forward.)

[7] A change of ownership of the vehicle during the term of the policy will not result in the lapse of the policy. Hence the insurer cannot avoid the payment of compensation under the policy to the victim of an accident on the ground of the sale of the motor vehicle. ('60) 1960-2 Mad L Jour 202 (203, 204).

[8] The fact that the third party did not specifically rely on S. 96 in the trial Court cannot estop him from objecting to the insurer preferring an appeal against the decree on grounds other than those that are permitted to him under sub-section (2) of this section. 1959 Punj 297 (301) [AIR V 46 C 90]; ILR (1959) Punj 714 (DB).

[9] The fact that the insurers were impleaded as defendants by the plaintiff himself at the time of the filing of the plaint and not on their own application later on cannot negative the effect of S. 96 and add to the insurers' right of defence against third party claims. 1959 Punj

297 (302) [A I R V 46 C 90]; ILR (1959) Punj 714 (DB).

[10] Even where the insurer cannot come in and defend a suit by a third party under sub-section (2) he should be allowed as a matter of elementary justice to defend at least through the defendant or in the name of the defendant if the judgment in the suit is to be enforced against him. 1955 Bom 278 (279) [(S) AIR V 42 C 73].

[11] A notice through Court required to be given to the insurance company under S. 96 must be of a reasonable duration. Hence where an ex parte decree is passed and the insurance company satisfies the Court through the defendant who is nominal defendant only that it had no sufficient time to defend the case the Court acting under its inherent jurisdiction can set aside such decree. 1953 Bom 109 (111) [AIR V 40 C 35]; ILR (1953) Bom 296.

[12] It is no doubt true that the object of providing notice to the insurance company through the Court under S. 96 is to enable the insurance company to defend the action in its own right and in its own name under any of the grounds enumerated in this section but there is another purpose or object and that is to enable the insurance company to see that the action is properly defended and that the decree does not go against the defendant by default or that the decree is not passed collusively against the defendant. Hence where it is found that the defendant who had left India

- (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
- (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

[(2A) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in the State of Jammu and Kashmir or in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908, conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938, and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India :

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the State of Jammu and Kashmir or of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

#### Section 96 — Note 1 (contd.)

is not likely to defend the action and the notice under S. 96 has been served on the insurance company the Court can exercise its inherent powers under S. 151, Civil Procedure Code in the interest of justice and permit the insurance company to defend the action in the name of the defendant even on grounds not mentioned under sub-section (2). 1955 Bom 39 (41, 42) [(S) AIR V 42 C 9] : ILR (1954) Bom 1422 (DB) + 1960 Punj 131 (132) [AIR V 47 C 42] : ILR (1960) 1 Punj 365. (Assured himself defending action and objecting to insurer being allowed to defend on merits — Insurer unable to prove collusion on the part of the assured — Held, Court rightly refused to exercise its power under S. 151 Civil P. C. to allow the prayer of the insurer.) + 1955 Punj 187 (189) [(S) AIR V 42 C 74] : ILR (1955) Punj 1174 (DB).

[But see 1959 Punj 297 (303) [AIR V 46 C 90] : ILR (1959) Punj 714 (DB). (Suit against assured and insurer decreed against both — Assured not filing appeal — Insurer cannot be permitted by invoking powers under S. 151, Civil P. C. to argue the appeal in the name of the assured on grounds which the insurer cannot rely upon under sub-s. (2) of this section.)]

[13] The insurer cannot enforce against the insured the "control of proceedings clause" in the policy and represent him in the third party's action when the insured disputes his right to take over the defence in the action. Punj 131 (132) [AIR V 47 C 42] : ILR (1960) 1 Punj 365. (Even if he can enforce such a clause he must claim the right at the trial itself : When having failed on defence he took up at the trial he claims the right under

the clause for the first time in revision his claim must be rejected as untenable.)

[14] A suit by a third party against the insurance company for damages sustained by him in a motor accident is not maintainable. The third party has a right of suit only against the insured. Section 96 gives him only the right to execute the decree obtained against the insured against the insurance company as if the company itself were the judgment-debtor. 1958 Andh Pra 309 (310) [AIR V 45 C 85] : ILR (1958) Andh Pra 281 + 1957 Mad 236 (238) [AIR V 44 C 78]. (Where the assured is dead he should implead his heirs and legal representatives. Without them he cannot proceed against the insurer.)

[15] Where a suit by the third party against the assured is barred by Art. 22 of the Limitation Act it is also barred against the insurance company which has been made a co-defendant in the suit. Art. 86 (b) of the Limitation Act cannot help to save the suit against the company because its application is limited to suits by the assured against the insurers. 1958 Andh Pra 309 (310) [AIR V 45 C 85] : ILR (1958) Andh Pra 281.

[16] Sub-section (2) does not contemplate the passing of a decree against the insurer himself. It is only a declaratory provision which permits the insurer being deemed to be the judgment-debtor for the purposes of executing the decree passed against the assured. 1959 J & K 90 (91) [AIR V 46 C 36] + 1957 Mad 236 (238) [AIR V 44 C 78].

[17] The decree passed against the assured in an action for damages can be enforced against the insurance company as if it is the judgment-debtor even though the insurance company is not a party defendant and is not



(3) Where a certificate of insurance "[\* \* \*]" has been issued under sub-section (4) of section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 95, be of no effect :

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) <sup>b</sup>[or sub-section (2A)] has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) <sup>b</sup>[or sub-section (2A)] otherwise than in the manner provided for in sub-section (2) <sup>b</sup>[or in the corresponding law of the State of Jammu and Kashmir or of the reciprocating country, as the case may be].

[a] The words "or a cover note" were omitted by the Motor Vehicles (Amendment) Act, 1958 (C of 1958), S. 76 [w. e. f. 16-2-1957]. [aa] Substituted for the words "a public service vehicle or a goods vehicle" by the Repealing and Amending Act, 1960 (LVIII of 1960), S. 3 and Sch. II [26-12-1960]. [b] Inserted, *ibid.* [c] The words "or cover note" were omitted by Act C of 1958, S. 76 [w. e. f. 16-2-1957].

#### OBJECTS AND REASONS

Sub-section (2A). — This sub-section "provides for the insurer's liability where the cause of action arises in the State of Jammu and Kashmir or in a reciprocating country."  
—S. O. R.

### 97. Rights of third parties against insurers on insolvency of the insured.

(1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

#### Section 96 — Note 1 (contd.)

eo nomine a judgment-debtor. Hence the absence of a direction in the decree that it should be paid by the insurance company solely or jointly with the assured cannot save the insurer from payment. 1956 Mad 464 (466) [AIR V 43 C 151] : ILR (1957) Mad 308.

[18] The claim of the insurer for exemption from liability on the ground that the policy in question had been cancelled and the certificate of insurance returned to them before the occurrence of the accident on the basis of which they are sought to be made liable falls within the ground of defence mentioned in sub-clause (a) of clause (2) of S. 96. 1957 Mad 779 (780) [AIR V 44 C 256].

[19] Where a fatal accident occurred while

the vehicle was being driven by an unlicensed person with the connivance of and in the presence of the driver it was held that any liability to pay damages to the heirs of the deceased could not arise against the insurance company. 1955 Assam 157 (161) [(S) AIR V 42 C 36] (DB).

#### Section 97 — Note 1

[1] The third party can sue the insurance company directly under the policy where the insured is an insolvent. 1958 Andh Pra 309 (310) [AIR V 46 C 85] : ILR (1958) Andh Pra 261.



(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge, if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

## **98. Duty to give information as to insurance.**

(1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official

assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

### **99. Settlement between insurers and insured persons.**

(1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment, or disposition or payment has been made.

### **100. Saving in respect of sections 97, 98 and 99.**

(1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of sections 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

### **101. Insolvency of insured persons not to affect liability of insured or claims by third parties.**

Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

**102. Effect of death on certain causes of action.**

Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance '[\* \* \*]' had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

[a] The words "or cover note" were omitted by the Motor Vehicles (Amendment) Act 1958 (C of 1958), S. 77 [w. e. f. 16-2-1957].

**103. Effect of certificate of insurance.**

When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

- (a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and
- (b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

**104. Duty to surrender certificate on cancellation of policy.**

(1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

(2) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

**105. Duty of insurer to notify registering authority cancellation or suspension of the policy.**

Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the [State Government] may prescribe.

**Section 102 — Note 1**

[1] The plaintiff in a suit for damages for personal injury, brought by him against the owner of the vehicle and insurance company, is entitled to bring on record, on the death of the owner during the pendency of the suit, his legal representatives. The cause of action survives under S. 102 only against the representatives of the deceased and not against the estate because the estate as such is neither a person nor the legal representative of a person against whom a decree can be passed. 1957 Mad 236 (241 to 243) [AIR V 44 C 78]. (The

L. Rs. cannot successfully resist the application of the plaintiff on the plea that they hold no estate of the deceased. Such a plea would avail them only when the decree is enforced against them.)

**Section 105 — Note 1**

[1] Omission to notify cancellation or suspension of a policy as required by S. 105 does not keep alive the rights of the third parties to claim benefits under that policy. 1956 Cal 555 (562) [AIR V 43 C 159] (DB).

**106. Production of certificate of insurance.**

(1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform <sup>a</sup>[authorised in this behalf by the State Government] produce the certificate of insurance relating to the use of the vehicle.

b[\* \* \* \* \*]

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89;

b[\* \* \* \* \*]

<sup>a</sup>[(2A) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident :

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.]

(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the <sup>a</sup>[State Government] to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 78 [w. e. f. 16-2-1957].* [b] *Proviso was omitted, ibid.*

**OBJECTS AND REASONS**

*Amendments made in 1956* — The amendments are intended "to enable the State Governments to restrict the powers of junior police officers in the matter of demanding production of certificates of insurance in respect of motor vehicles. It is considered that the driver of a transport vehicle should be required

to carry the certificate of insurance on the vehicle at all times in order to facilitate the task of the checking staff . . . . As certificates of registration and fitness are already required to be carried on transport vehicles, this additional requirement is not likely to cause any inconvenience." —S. O. R.

**107. Production of certificates of insurance on application for authority to use vehicle.**

A <sup>a</sup>[State Government] may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

**108. Co-operative Insurance.**

(1) A <sup>a</sup>[State Government] may, on the application of a co-operative society of <sup>a</sup>[transport vehicle] owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a <sup>a</sup>[State] Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the State, allow the society to transact the business of an insurer for the purposes of this Chapter <sup>b</sup>[ \* \* \* ], subject to the following conditions, namely :—

- (a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and pro rata for every additional vehicle in the possession of <sup>c</sup>[members of, and insured with, the society subject to a maximum of one hundred and fifty thousand rupees] and the said fund shall be lodged in such custody as the <sup>a</sup>[State Government] may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the society ;
- <sup>d</sup>[(b) the insurance business of the society shall, except to the extent permitted under clause (cc), be limited to transport vehicles owned by its members, and its liability shall be limited as specified in sub-section (2) of section 95 ;]
- (c) the society shall, if required by the State Government, reinsure against claims above <sup>e</sup>[such amount as may be specified by the State Government] ;
- <sup>f</sup>[(cc) the society may, if permitted by the State Government and subject to such conditions and limitations as may be imposed by it, accept re-insurances from other societies allowed to transact the business of an insurer under this section ;]
- (d) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the society ;
- (e) an independent authority not associated with the society shall be appointed by the State Government to facilitate and assist in the settling of claims against the society ;
- (f) the society shall operate on an insurance basis, that is to say,—
  - (i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in <sup>g</sup>[ \* \* \* ] sub-section (2) of section 95 ;
  - (ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder ;
- (g) the society shall furnish to the <sup>h</sup>[Controller of Insurance] the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the <sup>h</sup>[Controller of Insurance] may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act ; [ \* \* \* ]
- <sup>i</sup>[(h) the society shall, in respect of any business transacted by it of the nature referred to in clause (i) of the proviso to sub-section (1) of section 95, be deemed to be an insurer within the meaning of sub-section (1) of section 10 and sub-section (6) of section 13 of the Insurance Act, 1938 ;
- (i) the provisions of the Insurance Act, 1938, relating to the winding up of insurance companies shall, to the exclusion of any other law inconsistent

therewith and subject to such modifications as may be prescribed, apply to the winding up of the society.]

(2) Except as provided in sub-section (1), the Insurance Act, 1938, shall not apply to any co-operative society of <sup>4</sup>[transport vehicle] owners allowed to transact the business of an insurer under this section.

[a] Substituted for "public service vehicle" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 79 [w. e. f. 16-2-1957]. [b] The words "as if the society were an authorised insurer" were omitted, *ibid.* [c] Substituted for "members of the society", *ibid.* [d] Substituted for the former clause (b), *ibid.* [e] Substituted for "a prescribed amount", *ibid.* [f] Inserted, *ibid.* [g] The words, brackets and letter "clause (b) of" were omitted, *ibid.* [h] Substituted for "Superintendent of Insurance" by the Repealing and Amending Act, 1952 (XLVIII of 1952), S. 3 and Sch. II [2-8-1952]. [i] The word "and" was omitted by Act C of 1956, S. 79 [w. e. f. 16-2-1957]. [j] Substituted for clause (h), *ibid.* [k] Substituted for the words "public service vehicle" by the Repealing and Amending Act, 1960 (LVIII of 1960), S. 3 & Sch. II [26-12-1960]

### OBJECTS AND REASONS

*Amendments made in 1956*—"It is proposed to expand section 108 so as to make possible the co-operative insurance of goods vehicles as well as public service vehicles and to clarify what appears to be the present intention in regard to the scope of the business open to co-operative insurance companies. It

is also necessary to raise the maximum amount of the fund to be established by a co-operative society transacting insurance business relating to motor vehicles, so as to bring it in line with the provisions of Insurance Act, 1938. The amendments make the necessary provision."

—S. O. R.

### 109. Duty to furnish particulars of vehicle involved in accident.

A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

### \*110. Claims Tribunals.

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a Judge of the High Court.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.

[a] Sections 110 to 110F were substituted for the former S. 110 by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 80 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

*Sections 110 to 110F.*—"Under the existing section 110, powers to appoint persons to investigate and report on motor accidents have been given to State Governments but the

officers so appointed are not empowered to adjudicate on the liability of the insurer or on the amount of damages to be awarded, except at the express desire of the insurance

company concerned. This provision has not helped persons of limited means in preferring claims on account of injury or death, because a Court decree has to be obtained before the obligation of an insurance company to meet claims can be enforced. It is, therefore, pro-

posed to empower State Governments to appoint Motor Accident Claims Tribunals to determine and award damages." The amendments in these sections make the necessary provision.

—S. O. R.

#### **\*110A. Application for compensation.**

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 110 may be made—

- (a) by the person who has sustained the injury ; or
- (b) where death has resulted from the accident, by the legal representatives of the deceased ; or
- (c) by any agent duly authorised by the person injured or the legal representatives of the deceased, as the case may be.

(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

(3) No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

[a] See Foot-note (a) under S. 110.

#### **\*110B. Award of the Claims Tribunal.**

On receipt of an application for compensation made under section 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid ; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer.

[a] See Foot-note (a) under S. 110.

#### **\*110C. Procedure and powers of Claims Tribunals.**

(1) In holding any inquiry under section 110B, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed ; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1895.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

[a] See Foot-note (a) under S. 110.

#### **\*110D. Appeals.**

(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees.

[a] See Foot-note (a) under S. 110.



**\*110E. Recovery of money from insurer as arrear of land revenue.**

Where any money is due from an insurer under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

[a] See Foot-note (a) under S. 110.

**\*110F. Bar of jurisdiction of Civil Courts.**

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

[a] See Foot-note (a) under S. 110.

**OBJECTS AND REASONS**

"The Committee think that courts should be debarred from issuing injunction not only in respect of any action which may be taken before such tribunal [that is, the Claims Tribunal]. The Committee have, therefore, *inserted* the words "or before" after the words "action taken or to be taken by" in section 110F." — J. C. R.

**111. Power to make rules.**

(1) The Central Government may make rules<sup>a</sup> for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the forms to be used for the purposes of this Chapter ;
- (b) the making of applications for and the issue of certificates of insurance;
- (c) the issue of duplicates to replace certificates of insurance <sup>b</sup>[lost, destroyed or mutilated] ;
- (d) the custody, production, cancellation and surrender of certificates of insurance ;
- (e) the records to be maintained by insurers of policies of insurance issued under this Chapter ;
- (f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this Chapter ;
- (g) the furnishing of information respecting policies of insurance by insurers;
- (h) the carrying into effect of the provisions of section 108 ;
- (i) adapting the provisions of this Chapter to vehicles brought into <sup>c</sup>[India] by persons making only a temporary stay therein <sup>d</sup>[or to vehicles registered in the State of Jammu and Kashmir or in a reciprocating country and operating on any route or within any area in India] by applying those provisions with prescribed modifications ; and
- (j) any other matter which is to be or may be prescribed.

[a] See the Motor Vehicles (Third Party Insurance) Rules, 1946 [came into force on 1-7-1946]—Gaz. of Ind. 1946, Pt. I-Sec. 1, page 642. These Rules are amended by the Amendment Rules, 1960, so as to "extend to the whole of India except the State of Jammu and Kashmir and Kerala". — see S. R. O. 1719 dated 8-7-1960 in Gaz. of Ind., 1960, Extra., Pt. II-Sec. 3 (ii), page 395. The Amending Rules, 1960, came into force on 15-7-1960.

See also the Motor Vehicles International Circulation Rules, 1933.

[b] Substituted for "lost or destroyed", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 81 [w.e.f. 16-2-1957]. [c] Substituted for "the States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [d] Inserted by Act C of 1956, S. 81 [w. e. f. 16-2-1957].

**\*[111A. Power of State Government to make rules.**

A State Government may make rules for the purpose of carrying into effect



the provisions of sections 110 to 110E, and in particular, such rules may provide for all or any of the following matters, namely :—

- (a) the form of application for claims for compensation and the particulars it may contain; and the fees, if any, to be paid in respect of such applications;
- (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;
- (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;
- (d) the form and the manner in which an appeal may be preferred against an award of a Claims Tribunal; and
- (e) any other matter which is to be, or may be, prescribed.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 82 [w. e. f. 16-2-1957].

## CHAPTER IX

### OFFENCES, PENALTIES AND PROCEDURE

#### 112. General provision for punishment of offences.

Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to <sup>a</sup>[one hundred rupees] or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to <sup>b</sup>[three hundred rupees].

[a] *Substituted* for "twenty rupees" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 83 [w. e. f. 16-2-1957]. [b] *Substituted* for "one hundred rupees", *ibid*.

### STATE AMENDMENT

#### BIHAR

In its application to the State of Bihar, for section 112 substitute the following section, namely,—

"112. *General provision for punishment of offences.* — Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to one hundred rupees, or, if having been previously convicted of any offence under this Act, with fine which may extend to two hundred and fifty rupees."

—Bihar Act XXVII of 1950, S. 16 [21-7-1950].

#### SECTION 112 — SYNOPSIS

1. Acts punishable under the section.
2. Evidence and proof.
3. Procedure.
4. Measure of punishment.
5. Previous conviction and enhanced punishment.

##### 1. Acts punishable under the section.—

[1] An accused entering an inter-section of the main road carelessly and damaging another car is guilty of an offence under S. 112 and not under S. 116. (155) 1955 Mad WN 635 (638).

[2] Where a registered owner of a motor lorry for private use allows his driver to carry goods of another person for hire, the offence falls under R. 138, Madras Motor Vehicles Rules framed under the Act. The power conferred on the transport authority to suspend the permit in such cases cannot be regarded as a penalty for the offence, and, therefore, the owner can be prosecuted under S. 112. 1941 Mad 352 (352) [AIR V 28] : 42 Cri L Jour 320.

[3] Rule 4-20 (c) of the Punjab Motor Vehicles Rules has been validly made and hence its inclusion in a permit as a condition

must also be held to be valid. Consequently a contravention of that Rule by the permit-holder carries with it the possibility of punishment under S. 112. 1957 Punj 145 (146) [(S) AIR V 44 C 63].

[4] The owner of a motor bus or lorry licensed to carry more than twelve passengers becomes liable to punishment under the Act for using the vehicle without the assistance of a licensed conductor because he is in breach of R. 78 of the U. P. Motor Vehicles Rules. The fact that the vehicle carried a cleaner in the vehicle does not absolve the owner because a cleaner is not a conductor and the rule in question refers to a conductor by using the word attendant. 1947 All 70 (71) [AIR V 34 C 37] (DB).

[5] Rule 79 (VIII) of the C. P. and Berar Motor Vehicles Rules enjoins upon the driver and conductor not to allow any person to be carried in excess of the specified capacity and for a breach of that Rule both of them can be punished under S. 112. 1957 Nag 94 (95) [AIR V 44 C 32] : ILR (1956) Nag 817 : 1957 Cri L Jour 1300 (1).

[6] Where the permit has specified a condition that the maximum number of passengers carried at any one time shall not exceed the

**Section 112 — Note 1 (contd.)**

number specified in the permit the driver and the conductor who overload the bus become punishable under S. 123 for a contravention of S. 42 (1). Hence even though a rule has also been framed by the Government making them responsible for not allowing an overload of passengers they cannot be punished under section 112 treating their contravention as one of that rule. The provisions of S. 112 cannot be invoked where the offence in question is punishable under some other provision of the Act. ('55) 1955 Raj L W 38 (39).

[7] Where the driver of a motor lorry used as a goods vehicle carries more than six persons in it without a permit though the vehicle is not loaded with goods at the time, he is guilty of a breach of R. 93 (2) of the Bombay Motor Vehicle Rules, and is liable to conviction under S. 112 of the Motor Vehicles Act. 1942 Bom 184 (185) [A I R V 29] : 43 Cri L Jour 645 (DB).

[8] The driver of a vehicle who fails to wear the badge as prescribed by R. 89 (a) of the M. B. Motor Vehicles Rules commits an offence punishable under S. 112. ('54) Madh B L J 1954 H C R 1012 (1014).

[9] The driver of a motor vehicle who waits at a place which is not a stopping place for the passengers to come from a hotel in front of that place becomes punishable for a contravention of R. 220 of the Madras Motor Vehicles Rules. 1946 Mad 175 (175) [A I R V 33 C 105].

[10] The mere taking of a cab with a defective meter to the Motor Vehicles Department for a renewal of the fitness certificate does not amount to a contravention of R. 174 (d) of the Bengal Motor Vehicles Rules because there is no user either of the cab or the meter within the meaning of the Rule in such a case. Therefore, the conviction of the owner under S. 112 is not sustainable. 1950 Cal 329 (330) [A I R V 37 C 117] : 51 Cri L Jour 1236.

[11] The duty to exhibit the Registered laden weight on a goods vehicle in the manner prescribed by R. 31 of the Jaipur Motor Vehicles Rules is cast on the owner by R. 24 and hence the driver of the vehicle cannot be punished under S. 112 for a contravention of that requirement. 1958 Madh Pra 29 (30) [A I R V 45 C 16] : 1958 Cri L Jour 51.

[12] Rules 78 and 79 of the U. P. Motor Vehicles Rules which deal with the duties of drivers and conductors do not lay it upon either of them to equip the public service vehicle with a fire extinguisher or even to see that it is equipped with one. Therefore, if a public service vehicle is not equipped with a fire extinguisher its driver and conductor cannot be held liable for contravention of S. 112 read with R. 162 of those Rules. 1952 All 278 (278) [A I R V 39] : ILR (1950) All 441 : 1952 Cri L Jour 588.

[13] The transferee of a vehicle cannot be punished under S. 112 for his failure to report the transfer within the prescribed time under S. 31. 1959 Raj 175 (177) [A I R V 46 C 66] : ILR (1959) 9 Raj 419 (DB).

[14] Licence expiring on February 2—Accused found driving on February 17—Licence got renewed by him on the same day with effect from February 2—*Held*, that at the time when prosecution was launched, accused could produce the licence which, in terms, was effective, from February 2, for one year and which was effective, therefore, on the day on which offence was alleged to have been committed. Conviction could not, therefore be sustained. 1942 Bom 216 (217) [A I R V 29] : 43 Cri L Jour 778 (DB).

[But see 1942 Mad 196 (197) [A I R V 29] : 43 Cri L Jour 524.]

[15] Where the operation of a rule has been suspended until further orders by the Government no offence of contravention of that rule punishable under S. 112 can arise while the suspension lasts. ('54) Madh B L J 1954 H C R 1012 (1014). (Rule 88 of the M. B. Motor Vehicles Rules suspended until further orders—Non-compliance with the rule during the period of suspension is no offence.)

**2. Evidence and proof.** — [1] An owner must be proved to have known or connived at the action of the driver in taking the vehicle through an unauthorised road or in carrying more than four servants in contravention of the limit mentioned in the permit before he can be punished for the same under S. 112. 1959 Orissa 50 (52) [A I R V 46 C 15] : ILR (1958) Cut 572 : 1959 Cri L Jour 358.

[2] To establish an offence under S. 3 read with S. 112 there should be proof not merely of the accused having driven a vehicle without a licence but also of his having done so in a public place. ('55) 1955 Raj L W 258 (259). (Hence he cannot be convicted on his confession where it contains no admission as to the latter requirement.)

[3] To convict an owner under S. 112 read with S. 5 it is not necessary to prove that he permitted another to drive the vehicle with knowledge that the other had no driving licence. 1951 Bom 308 (308) [A I R V 38 C 66] : ILR (1951) Bom 200 (DB).

[4] Before a conviction can be recorded for violation of R. 380 the following conditions must be satisfied; (i) there must be luggage carried by a stage carriage; (ii) the luggage must be outside the stage carriage, and (iii) the weather must be wet. It is only when all these three conditions co-exist that an obligation is laid to protect the luggage by a suitable waterproof covering. It is impossible to construe that rule to mean that a passenger bus should always have a tarpaulin while on road whether the weather is wet or dry for protecting the samans of the passengers from being drenched in case of rain. 1954 Mad 1014 (1015) [A I R V 41 C 348] : 1954 Cri L Jour 1558.

[5] It is of the utmost importance that when a prosecution for driving the car without proper lights is being undertaken, there should be independent and direct evidence indicating exactly the time at which the car had been observed being driven on the public road with defective lights. 1926 Pat 446 (448) [A I R V 13] : 27 Cri L Jour 1072.

**\*[113. Disobedience of orders, obstruction and refusal of information.]**

(1) Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or

**Section 112 — Note 2 (contd.)**

[6] When the driver and the conductor of a lorry are prosecuted for committing a breach of the conditions of the registration certificate and the permit, they are required to be produced in evidence. If they do not care to produce them in Court the prosecution is entitled to produce secondary evidence. 1952 All 276 (277) [AIR V 39] : ILR (1950) All 441 : 1952 Cri L Jour 588.

**3. Procedure.**—[1] The procedure of issuing summonses by the Magisterial Courts purporting to charge motorists, owners or drivers of offences under the Act without giving the slightest particulars of the offences alleged is not justified by law. Section 68, Cr. P.C., incorporates the form of summons which is a statutory form contained in Sch. 5 of the Code and should be issued to the accused persons. 1928 All 261 (262, 263) [AIR V 15] : 29 Cri L Jour 357 (DB)+1936 All 761 (762) [AIR V 23] : 38 Cri L Jour 69 : ILR (1937) All 130. (Conviction based upon summons not giving notice of charge to accused is illegal.) \* 1937 Oudh 444 (444) [AIR V 24] : 38 Cri L Jour 947 : 13 Luck 437. (Summons not specifying rule broken by accused—Trial is bad.) \* 1934 Oudh 370 (371) [AIR V 21] : 35 Cri L Jour 1161.

[2] The conviction of an accused is not rendered invalid solely because the summons which ought to have been issued under S. 112 mentioned a wrong section and also failed to mention the rule which was broken by the accused. These are mere irregularities curable under S. 537, Criminal P. C., where no prejudice has been caused to the accused at his trial. (52) ILR (1952) 2 Raj 941 (943) (DB).

[3] The accused was charged with offences under Rr. 24(1), 48 and 49 of the Punjab Motor Vehicles Rules framed under the Act of 1914. The nature of the offence was not specified in the summons which was issued to him. The case was taken up before the date fixed and no adjournment was granted to the accused to enable him to produce his evidence in support of his defence. *Held*, that the accused was prejudiced in his defence and, therefore, his conviction could not be sustained. 1941 Lah 114 (115) [AIR V 28] : ILR (1940) Lah 678 : 42 Cri L Jour 481.

[4] Where the notice served on the accused did not contain the particulars of sections which were contravened and under which he was being charged but the accused knew the offence with which he had been charged and led evidence it was held that the omission was a mere irregularity which did not affect the conviction under S. 78 read with S. 112. 1955 Hyd 259 (260) [AIR V 42 C 76] : ILR (1955) Hyd 142 : 1955 Cri L Jour 1588 (1) (DB).

[5] Section 279 of the Penal Code is a self-contained provision like any other section in that Code prescribing the extent of punishment. Hence it is mistake in framing a charge

under that section to connect or read it with S. 112 of the Motor Vehicles Act. 1958 Mad 286 (286) [AIR V 45 C 88] : 1958 Cri L Jour 775.

[6] Section 562 (1) (a), Criminal P. C., only applies to a certain limited class of cases, such as theft and so on under the Penal Code, but does not apply to an offence under the Motor Vehicles Act. 1926 Bom 230 (231) [AIR V 13] : 27 Cri L Jour 528 (DB).

[7] Rule 2 (g) of the Motor Vehicles Rules merely means that the word "Magistrate" means a stipendiary Magistrate where this word is used in the rules. The rules, however, do not deal with the trial of offences under the Act. Hence an offence under S. 112 read with R. 79 (iii) can be tried by an Honorary Special Magistrate. 1941 Oudh 266 (266, 267) [AIR V 28] : 42 Cri L Jour 350.

**4. Measure of punishment.**—[1] For an offence of overloading the fine to be imposed should be stiff and a deterrent multiple of the illegal profit made by overloading. 1960 Madh Pra 318 (318) [AIR V 47 C 157] : 1960 Cri L Jour 1339 (2). (A fine amounting to twenty-five times the irregular income was imposed.)

[2] A person who is convicted under S. 112 for violation of R. 90 (b) of Bengal Motor Vehicle Rules, can in addition to the punishments to which he may be liable, be disqualified from holding a licence to drive a motor vehicle. 1955 Cal 567 (568) ((S) AIR V 42 C 176) : 1955 Cri L Jour 1477.

**5. Previous conviction and enhanced punishment.**—[1] It is inequitable to exact from a person the enhanced fine under S. 112 of the Motor Vehicles Act unless he has suffered a first conviction and after that conviction he has again offended. 1942 Lah 123 (126) [AIR V 29] : 43 Cri L Jour 673 : ILR (1943) Lah 106 (DB).

[2] The words in S. 112 of the Motor Vehicles Act 'convicted of any offence under this Act' mean only convicted of an offence under the present Act and does not include convictions under the old Act of 1914 and so the latter cannot be taken into consideration in fixing the fine payable. 1941 Oudh 250 (250) [AIR V 28] : 16 Luck 644 : 42 Cri L Jour 406.

**Section 113 — Note 1**

[1] A police officer may under the Act stop the bus not only for the purpose of regulating the traffic but also for other purposes such as to obtain the name and address of the driver etc. Hence in spite of the fact that the police officer, when he gave the signal to stop, was not regulating the traffic, the failure of the driver to obey the signal would amount to an offence under the Act. 1930 Mad 445 (445) [AIR V 17] : 31 Cri L Jour 639. (Case decided under S. 4 of the Motor Vehicles Act, 1914.)

authority is required or empowered under this Act to discharge, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to five hundred rupees.

(2) Whoever, being required by or under this Act to supply any information, wilfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.]

[a] *Substituted* for the original section by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 84 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

"The Committee feel that in providing a penalty in section 113 of the Act, a distinction should be made between the offence of wilful disobedience of any direction or obstruction on the one hand and the withholding of information or the giving of false

information on the other. The Committee are of the view that the punishment in the former case should be restricted to fine, but that in the latter case the punishment may be imprisonment or fine or both as provided in the clause (now section)." —J. C. R.

### 114. Offences relating to licences.

\*[(1)] Whoever, being disqualified under this Act for holding or obtaining a <sup>b</sup>[driving licence], drives a motor vehicle in a public place or applies for or obtains a <sup>b</sup>[driving licence] of, not being entitled to have a <sup>b</sup>[driving licence] issued to him free of endorsement, applies for or obtains a <sup>b</sup>[driving licence] without disclosing the endorsements made on a <sup>b</sup>[driving licence] previously held by him or, being disqualified under this Act for holding or obtaining a <sup>b</sup>[driving licence], uses in <sup>c</sup>[India] a <sup>b</sup>[driving licence] such as is referred to in sub-section (2) of section 9, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to <sup>d</sup>[five hundred rupees], or with both, and any <sup>b</sup>[driving licence] so obtained by him shall be of no effect.

•[(2)] Whoever, being disqualified under this Act, for holding or obtaining a conductor's licence, acts as a conductor of a stage carriage in a public place or applies for or obtains a conductor's licence or, not being entitled to have a conductor's licence issued to him free of endorsement, applies for or obtains a conductor's licence without disclosing the endorsements made on a conductor's licence previously held by him shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both, and any conductor's licence so obtained by him shall be of no effect.]

[a] Section 114 was *renumbered* as sub-section (1) thereof by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 85 [w. e. f. 16-2-1957]. [b] *Substituted* for "licence", *ibid.* [c] *Substituted* for "the States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [d] *Substituted* for "two hundred and fifty rupees" by Act C of 1956, S. 85 [w. e. f. 16-2-1957]. [e] *Inserted, ibid.*

### 115. Driving at excessive speed.

(1) Whoever drives a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to one hundred rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to two hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the

#### Section 115 — Note 1

[1] Where there is no proof that the speed restriction alleged to have been contravened had been notified in the Official Gazette and also published by means of the traffic signals

under section 75, a person cannot be convicted for the contravention complained of. 1959 Mys 144 (145) [AIR V 48 C 58] : ILR (1958) Mys 225 : 1959 Cri L Jour 750.

opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical '[\*] device.

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without infringing the provisions of section 71, be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (v).

[a] The word "timing" was omitted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 86 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

"It has been argued in Courts that a speedometer is not "a mechanical timing device" within the meaning of sub-section (3) of section 115. The amendment seeks to provide for the use of speedometer as evidence of excessive speed." —S. O. R.

### 116. Driving recklessly or dangerously.

Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

#### Section 116 — Note 1

[1] The section deals with reckless driving dangerous to the public having regard to all the circumstances of the case while S. 279, Penal Code, refers to driving in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person. 1938 Rang 161 (164) [AIR V 25]: 39 Cri L Jour 642 (DB).

[2] The accused was driving on the wrong side of road at a sharp corner entering into a thoroughfare of considerable traffic with the result that he came into collision with a motor bicycle, the side-car of which was damaged. It was due to the presence of mind of the person who was riding the motor bicycle that no further damage occurred — *Held* that an offence under S. 279, Penal Code, was committed. The offence was more serious than that contemplated by S. 5 of the 1914 Act. 1921 Sind 97 (97) [AIR V 8]: 16 Sind LR 147: 26 Cri L Jour 253 (DB).

[3] The section refers to a person who is driving a car in a manner which would in ordinary circumstances be proper, but owing to the special conditions of the road at the time he is riding on it, is improper. 1921 Sind 97 (97, 98) [AIR V 8]: 16 Sind LR 147: 26 Cri L Jour 253 (DB).

[4] A person is bound not to drive in a manner which would be dangerous to the public. In determining whether the manner of driving was dangerous to the public or not regard must be had to all the circumstances of the case and the amount of the traffic which actually was at the time in the place.

This is really a question of fact under the circumstances. 1928 Bom 564 (564) [AIR V 13]: 27 Cri L Jour 1213 (DB) + 1938 Pat 268 (269) [AIR V 25]: 39 Cri L Jour 382.

[5] In deciding whether an offence under S. 116 of the Act is committed, the Court has to consider whether the speed with which or the manner in which the vehicle was driven was dangerous to the public. In deciding this question the Court has to take into consideration circumstances of the case. 1953 Kutch 47 (48) [AIR V 40 C 32] + 1958 Raj 347 (348) [AIR V 45 C 114]: 1959 Cri L Jour 87.

[6] To convict a man for negligent driving an error of judgment alone is not sufficient. There must be criminal negligence and criminal negligence means gross or culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular which, having regard to all the circumstances out of which the charge has arisen, it is the imperative duty of the accused person to have adopted. 1932 Cal 461 (462) [AIR V 19]: 59 Cal 113: 33 Cri L Jour 549. (Accused convicted for negligent driving by right side and thereby colliding with taxi-cab — Evidence that there was no space on left side and that space on right side was very narrow — Driver standing still at time of collision — *Held* that there was only error of judgment.) + 1931 All 708 (710) [AIR V 18]: 32 Cri L Jour 1061 + 1934 Nag 65 (66) [AIR V 21]: 30 Nag LR 317: 35 Cri L Jour 696 + 1950 Mad 71 (73) [AIR V 37 C 42]: 51

# 117. Driving while under the influence of drink or drugs.

Whoever while driving or attempting to drive a motor vehicle is under the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

## Section 116 — Note 1 (contd.)

[7] A person cannot be convicted under S. 116 unless he is established to have driven his vehicle dangerously. Driving a vehicle recklessly is by itself no offence. 1950 Mad 71 (73) [AIR V 37 C 42] : 51 Cri L Jour 374.

[8] A motor vehicle cannot be driven recklessly along a place open to public traffic that is a road without potential danger to public and hence reckless driving in such circumstances amounts to dangerous driving and hence is an offence under S. 116. 1957 Andh-Pra 100 (102) [AIR V 44 C 42] : 1957 Cri L Jour 627. (AIR 1950 Mad 71, *Criticised*.)

[9] A collision resulting from an attempt to overtake a car in front at a high speed must be held to be in consequence of reckless and careless driving and not an error of judgment. Hence the accused must be held guilty of an offence under this section. 1960 Mad 50 (53) [AIR V 47 C 13] : 1960 Cri L Jour 239.

[10] Where the accused saw another car approaching him on its proper side of the road and where he ought to have drawn in behind the water-cart passing in the same direction as the accused and not have attempted to force his way past it in front of the oncoming car, held that the accused was guilty of dangerous driving. 1925 All 798 (800) [AIR V 12] : 26 Cri L Jour 1254.

[11] Where the driver of a motor lorry, accused of causing death of a person by rash and negligent driving, alleged that he saw two bullock-carts coming towards him in the middle of the road and that he intended to pass on his own left in the ordinary way but the bullock-cart drivers took their carts one to the right and one to the left and being unable to pass on his own left he swerved in order to try and pass on the right and so struck a tree thus causing the accident which resulted in the death of one of the passengers — Held that the accused was guilty as it was his negligence that caused the accident. 1931 All 708 (710) [AIR V 18] : 32 Cri L Jour 1061.

[12] Where there is nothing to show that at the time of the accident the traffic on the road was such that the speed at which the accused was driving the bus can be considered to be either negligent or reckless, the accused cannot be convicted. 1938 Pat 268 (269) [AIR V 25] : 39 Cri L Jour 382.

[13] A person moving along the correct side of the road and at a reasonable speed cannot be said to have been driving dangerously merely because a pedestrian who was moving towards and also had taken warning of the approaching car in sufficient time suddenly cut across the road and was run over. 1950

Trav-Co 14 (16) [AIR V 37 C 9] : 1950 Trav-Co L R 416.

[14] Road sufficiently wide for four cars to pass abreast—Two cars going in one direction at 15 miles an hour—Another car coming from opposite direction — Person driving baby car at 25 miles per hour passing the two cars — He is not guilty of rash or negligent driving. 1929 Rang 14 (14) [AIR V 16] : 30 Cri L Jour 539.

[15] Where a person having found that the driver was not willing to stop the bus to pick up a passenger thought that if he went too close to the bus with extended hand the driver would certainly stop the bus in order to avoid an accident, and there was nothing to show that the speed at which the driver was driving was either negligent or reckless, held that the driver was not guilty of rash, reckless or negligent driving. 1938 Pat 268 (269) [AIR V 25] : 39 Cri L Jour 382.

[16] Entering the intersection in the main road without due care and attention amounts to an offence under S. 112 read with Regulations contained in the 10th Schedule to the Act and not an offence under this section. (155) 1955 Mad W N 635 (636).

[17] A person cannot be arrested for the commission of an offence under the Motor Vehicles Act. The power of arrest given under S. 57, Criminal P. C., will also be of no avail unless and until such offender fails to give his correct name and address. 1938 Rang 161 (163) [AIR V 25] : 39 Cri L Jour 642 (DB).

[18] Where a person who had been charged under Ss. 89 and 112 of the Act was found to have committed only an offence under S. 116 in course of proceedings it was held that he cannot be convicted and punished for that in disregard of the procedure laid down in S. 131. The applicability of the procedure in S. 131 is not limited to cases where the prosecution is launched initially under S. 115 or S. 116. 1952 Bom 385 (386) [AIR V 39] : ILR (1952) Bom 1100 : 1952 Cri L Jour 1446.

[19] An accused cannot be convicted under this section where the prosecution fails to prove even one of the three conditions mentioned under S. 131. 1958 Raj 347 (348) [AIR V 45 C 114] : 1959 Cri L Jour 87.

[20] Accused driving motor car while under influence of liquor and running into another motor car and damaging it—Accused convicted for driving while intoxicated—Subsequent trial and conviction for rash and negligent driving is not illegal. 1928 Bom 231 (232), [AIR V 15] : 29 Cri L Jour 981 (DB).

[21] Under the Act of 1914, it was held that separate sentences could not be passed under

**118. Driving when mentally or physically unfit to drive.**

Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for a first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

**\*[118A. Punishment for offences relating to accident.**

Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 57 or of section 58 or section 59 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

[a] *Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 87 [w. e. f. 16-2-1957].*

**119. Punishment for abetment of certain offences.**

Whoever abets the commission of an offence under section 116, 117 or 118, shall be punishable with the punishment provided for the offence.

**120. Racing and trials of speed.**

Whoever without the written consent of the [State Government] permits or takes part in a race or trial of speed between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to three hundred rupees, or with both.

**121. Using vehicle in unsafe condition.**

Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, \* [with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both].

[a] *Substituted for "with fine which may extend to five hundred rupees", by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 88 [w. e. f. 16-2-1957].*

**122. Sale of vehicle in or alteration of vehicle to condition contravening this Act.**

Whoever, being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition that the use thereof in a public place would be in contravention of Chapter V or any rule made thereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter V or any rule made thereunder shall be punishable with fine which may extend to \* [five hundred rupees] :

**Section 116 — Note 1 (contd.)**

S. 5 of that Act and S. 337 of the Penal Code for they are the same offences. (31) 1931 Mad W N 397 (399).

**Section 121 — Note 1**

[1] Where a person who drove a defective motor bus had been convicted and sentenced under section 304-A of the Penal Code, it was held that he could not be punished and

tenced again for the same act as an offence under section 121 of this Act. 1955 Mad 548 (549) [ (S) AIR V 42 C 154 ] : 1955 Cri L Jour 1267.

[2] The conviction of a person under S. 121 does not operate as a bar to his trial and conviction also under Ss. 304-A, 338 and 279 of the Penal Code. 1953 Pat 56 (58) [AIR V 40 C 17] : 31 Pat 716 : 1953 Cri L Jour 518.



Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

[a] *Substituted for "two hundred rupees" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 89 [w. e. f. 16-2-1957].*

### \*[123. Using vehicle without registration or permit.

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 22 or without the permit required by sub-section (1) of section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for a first offence with fine which may extend to one thousand rupees and for a subsequent offence if committed within three years of the commission of a previous similar offence, with imprisonment which may extend to six months or with fine which may extend to two thousand rupees, or with both :

Provided that no Court shall, except for reasons to be stated in writing, impose a fine of less than five hundred rupees for any such subsequent offence.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or of food or materials to relieve distress or of medical supplies for a like purpose :

Provided that the person using the vehicle reports such use to the Regional Transport Authority within seven days.

#### SECTION 123 — SYNOPSIS

1. Scope.
2. Acts constituting offences under the section.
3. Liability of owners.
4. Liability of persons other than the owner.
5. Sentence.

1. **Scope.** — [1] A conviction under S. 16 of the J. and K. Motor Vehicles Act after the repeal of that Act, in a case to which S. 123 of the Central Act applies, cannot be sustained. Such a conviction is bad not only because the scheme of S. 123 is entirely different but also because it deprives the accused of proving the exception provided for under S. 123. ('49) 7 J & K L R 182 (183).

2. **Acts constituting offences under the section.** — [1] The use of a motor vehicle which does not possess a certificate of fitness current for the time being is a contravention of S. 22 and is therefore punishable under S. 123. 1959 All 489 (492) [A I R V 46 C 123]. (Proper course in such a case is to proceed against the operator.) +1955 All 618 (619) [(S) A I R V 42 C 179] : 1955 Cri L Jour 1443 (DB). (Running vehicle without a fitness certificate. Person in charge of the vehicle is liable as he must be deemed to have allowed such a use of the vehicle.)

[2] When a trailer which has not been separately registered is attached to a tractor and used there is a contravention of S. 22 which is punishable under S. 123 (1). ('58) ILR (1959) 2 All 631 (634, 635).

[3] The whole scheme of the Act makes it clear that a permit is available only to the person to whom it has been granted. Hence a

person who takes a loan of a motor-vehicle from the permit-holder and runs it without taking a transfer of the permit commits an offence of running the bus without a permit in contravention of S. 42 (1) and becomes liable to punishment under S. 123. 1959 Mad 453 (456) [A I R V 46 C 145] : 1959 Cri L Jour 1192.

[4] Using a goods vehicle to carry passengers for hire is a contravention of S. 42 (1) punishable under S. 123 (1). 1957 Bom 243 (244) [(S) A I R V 44 C 84] : I L R (1957) Bom 291 : 1957 Cri L Jour 1236.

[5] Taking a vehicle into a territory not authorised by the permit is a contravention of S. 42 which is punishable under S. 123. 1958 Punj 316 (317) [A I R V 45 C 86] : 1958 Cri L Jour 1094 + 1957 Raj 63 (64) [A I R V 44 C 257] : ILR (1956) 6 Raj 846 : 1957 Cri L Jour 230 (DB) + 1955 Andh 277 (278) [A I R V 42 C 99] (DB) + ('55) 59 Cal W N 787 (789).

[6] Overloading the bus in contravention of the term of the permit is an offence punishable under S. 123. ('55) 1953 Raj L W 38 (39) + 1956 All 400 (400) [A I R V 43 C 140] : 1956 Cri L Jour 851 (2).

[7] Where a permit includes details of the number of passenger seats in the vehicle but does not express as a condition of the use of the vehicle that its seating capacity shall not be exceeded, overloading is not a breach of the condition of the permit punishable under S. 123 (1) read with S. 42 (1). 1943 Mad 283 (283, 284) [A I R V 30] : 44 Cri L Jour 479. (The breach however is one of R. 218 of the Madras Motor Vehicles Rules and is therefore punishable.)

[8] Rule 3 (b) of the Madras Motor Vehicles Rules excludes an employee of the permit-hol-



(3) Where a person is convicted of an offence under this section, the Court by which such person is convicted may, in addition to any sentence which may be passed under sub-section (1), by order—

(a) if the vehicle used in the commission of the offence is a motor car, suspend its certificate of registration for a period not exceeding four months;

(b) if the vehicle used in the commission of the offence is a transport vehicle, suspend its permit for a period not exceeding six months or cancel it.

(4) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1) may set aside or vary any order of suspension or cancellation made under sub-section (3) by the Court below and the Court, to which appeals ordinarily lie from the Court below may set aside or vary any such order of suspension or cancellation made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

[a] Substituted for the former section by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 90 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

"The provisions of section 123 have proved inadequate for effectively checking the growing tendency of owners of vehicles without permits using them for carriage of passengers for hire or reward. It is necessary to enhance the existing punishment for this offence and also to empower the Courts to suspend certification of registration of private cars for a period not exceeding four months and that of transport vehicles for a period of six months or to cancel them. The scope of the section is

also being expanded to bring within its ambit offences relating to use of vehicles without registration."

—S. O. R.

"The Committee have amended this clause so as to provide that the penalty should be one of fine only in the case of a first offence and of imprisonment or fine or both in the case of a subsequent offence committed within three years of the commission of a similar previous offence."

—J. C. R.

### Section 123 — Note 2 (contd.)

der travelling by the bus on duty from the category of passengers. In view of that rule the presence of a trainee ticket checker in the bus in excess of the number of passengers permitted to be carried does not amount to an overloading of the bus in contravention of the conditions. 1959 Mad 439 (439) [AIR V 45 C 139]; ILR (1959) Mad 481; 1959 Cri L Jour 1188.

[9] In recording a conviction under the Act for overloading the vehicle it is necessary to ascertain what was the overload. A mascot in the shape of a pet rabbit carried in excess of the authorised quota of passengers could no doubt constitute technically an overload but that does not deserve a conviction for the offence of overloading. (49) 7 J & K L R 38 (40).

[10] Where no rules have been framed by the Government under S. 56 (b) (iv) and the prohibition on vehicles against carrying goods other than railway goods has been placed only by the registering authority the contravention of that restriction does not amount to an offence punishable under S. 123. 1957 J & K 9 (10) [AIR V 44 C 7]; 1957 Cri L Jour 446.

[11] In the absence of a condition in the permit that tickets shall be issued to the passengers a failure to issue tickets to the passengers cannot amount to an offence under S. 42 (1) read with S. 123 of the Act. 1951 All 403 (404) [AIR V 38 C 73].

**3. Liability of owners.** — [1] The owner who uses his motor car to carry goods to the station without a permit is guilty of an offence punishable under S. 123. 1945 Mad 440

(440) [AIR V 32]; 47 Cri L Jour 233; 1 L R (1946) Mad 222. (Car used to carry newspaper bundles to the station without a permit.)

[2] The owner of a vehicle would be liable under S. 123 when goods had been in fact carried by it contrary to the conditions of the permit. 1945 Mad 347 (348) [AIR V 30]; 44 Cri L Jour 526.

[3] An owner of a motor car who carries his luggage or other goods for his private use cannot be prosecuted for infringing S. 38 read with S. 22 and S. 123 (1) of the Act. 1959 Mys 221 (222) [AIR V 46 C 88]; 1959 Cri L Jour 1095.

[4] Where an empty lorry was found at a place outside the route for plying and it was not in the course of business covered by the permit but because it was a short cut-route, the provisions of Ss. 42 and 123 of the Act cannot be said to have been offended. 1960 Mad 265 (266) [AIR V 47 C 87]; 1960 Cri L Jour 923.

[5] Where in a permit for a lorry under the column "nature of goods to be carried" building materials are mentioned but under the column 'conditions' no restriction is mentioned with regard to the goods to be carried, carrying by the lorry goods, other than building materials cannot be said to be a violation of the conditions within the meaning of Ss. 42 and 123. 1950 Mad 837 (838) [AIR V 37 C 350]; 51 Cri L Jour 1587.

[6] Where a lorry is owned by two persons in partnership, each of them is the owner of the lorry and each of them is liable under the strict wording of S. 123 (1) for the illegal act

**Section 123 — Note 3 (contd.)**

and, therefore, it cannot be said that when one of them has been convicted and fined the other cannot be fined. But in such cases it is undesirable to exact a fine from all the owners separately. 1942 Lah 125 (128) [A I R V 29] : 43 Cri L Jour 673 : ILR (1943) Lah 106 (DB).

[7] It is open to the authorities to prosecute an owner under S. 123 for a contravention of the conditions of the permit or to cancel or suspend his permit under S. 60. The two sections are not in conflict with each other and hence the plea that there can only be a prosecution for a contravention of the conditions of a permit is untenable. 1955 Andh 277 (278) [AIR V 42 C 99] (DB) \* ('57) 1957-2 Andh W R 296 (298).

[8] A manager of a limited company cannot be held liable under the provisions of the Act as the owner of a motor vehicle belonging to the company. He is merely an agent of the company acting under the control and directions of the Directors of the company. 1950 All 234 (237) [AIR V 37 C 89] : 51 Cri L J 734.

[9] There is a distinction between plying a motor vehicle without any permit at all or with a permit which had already expired on the one hand and plying a vehicle in contravention of the conditions laid down in a subsisting permit on the other. In the former case the requisite mens rea on the part of the owner may be inferred without any further evidence, but not in the latter case. 1959 Orissa 50 (52) [AIR V 46 C 15] : I L R (1958) Cut 572 : 1959 Cri L Jour 358.

[10] The prosecution has to prove all the ingredients of the offence beyond reasonable doubt when the owner is prosecuted for an offence under S. 112 or S. 123 of the Act. 1959 Orissa 50 (52) [AIR V 46 C 15] : I L R (1958) Cut 572 : 1959 Cri L Jour 358.

[11] Where the owner is charged under Ss. 42 and 123 (1) of permitting his motor vehicle to be used by his driver, the onus is on the prosecution to prove all the ingredients of the offence. 1943 Mad 41 (41, 42) [AIR V 30] : 44 Cri L Jour 180. (Mere negligence on owner's part in not locking up his car so that driver could not take it did not amount to 'permitting' use of car.) \* ('54) ILR (1954) 4 Raj 1032 (1036).

[12] In a prosecution of the owner on the ground that the driver had taken the vehicle through an unauthorised road or had carried more than the number of servants limited by the permit it is on the prosecution to prove that the owner knew or connived at the contravention. If there is no such evidence there can be no conviction either under S. 112 or S. 123. 1959 Orissa 50 (52) [AIR V 46 C 15] : ILR (1958) 1 Cut 572 : 1959 Cri L Jour 358.

[13] If the conductor and the Bus Driver conspire together and over-load a bus the owner cannot be punished unless, of course, it is proved that the over-loading was done at the instance or with the approval of the owner. 1960 Madh Pra 151 (152) [A I R V 47 C 71] : 1960 Cri L Jour 611.

**4. Liability of persons other than the owner.**—[1] Under S. 123 even a person other

than the owner is liable to punishment for driving a motor vehicle in contravention of S. 42 (1). Section 123 when read together with S. 42 (1) does not lead to the conclusion that it makes the owner alone liable to punishment. 1959 S C 79 (82) [AIR V 46 C 14] : 1959 Supp 1 S C R 153 : ILR (1958) 2 All 973 : 1959 Cri L Jour 248. (The expression "whoever drives etc.," in the section is wide enough to cover both the owner and one who is not the owner even though the words "or causes or allows a motor vehicle to be used" may well refer to the owner—AIR 1956 All 27, *Reversed*.) \* 1959 Ker 161 (163) [A I R V 46 C 55] : I L R (1959) Ker 37 : 1959 Cri L Jour 594 (DB). (Even before the amendment of the section a driver who drove a vehicle without a permit falls within the ambit of S. 123. The amendment only makes that clear beyond all doubt.) \* 1959 Ker 248 (248) [A I R V 46 C 87] : 1959 Cri L Jour 1074 (DB). (After the amendment of S. 123 (1), notwithstanding that S. 42 (1) places an obligation only on the owner the driving of the vehicle by any other person either without a permit or in contravention of the conditions of the permit is an offence.) \* 1958 Orissa 118 (123) [AIR V 45 C 32] : ILR (1958) Cut 113 : 1958 Cri L Jour 789 (DB) \* 1958 Punj 316 (317) [A I R V 45 C 86] : 1958 Cri L Jour 1094 \* 1957 Bom 243 (244) [(S) AIR V 44 C 84] : ILR (1957) Bom 291 : 1957 Cri L Jour 1236. (The expression 'whoever drives a motor vehicle' in S. 123 is not limited to the owner only.) \* 1957 Raj 63 (64) [AIR V 44 C 25] : ILR (1956) 6 Raj 846 : 1957 Cri L Jour 230 (DB) \* 1956 All 400 (400) [A I R V 43 C 140] : 1956 Cri L Jour 851 (2). (Hence the driver and the conductor can be convicted for carrying passengers in excess of the number prescribed in the permit.) \* 1955 Raj 183 (184) [AIR V 42 C 57] : I L R (1955) 5 Raj 656 : 1955 Cri L Jour 1396 (DB) \* ('55) 1955 Raj L W 38 (39). (The driver and the conductor can, therefore, be convicted under Section 123 (1) of the Act.) \* ('55) 59 Cal W N 787 (789). (Driver who takes a motor vehicle out of route mentioned in the valid permit is liable under S. 123.) \* 1954 Raj 250 (251) [A I R V 41 C 78] : ILR (1953) 3 Raj 701 : 1954 Cri L Jour 1643. (The words "whoever drives the motor vehicle" in the section are wide enough to cover drivers other than owners of the bus.) \* 1952 Punj 45 (46) [A I R V 39] : I L R (1952) Punj 308 : 1952 Cri L Jour 131 \* 1941 Mad 845 (846) [AIR V 28] : 43 Cri L Jour 49.

[2] Any person who is in charge of a motor vehicle and allows it to be used in contravention of the provisions of Ss. 22 and 42 (1) is liable for punishment under S. 123 even though he may not himself be the owner of the vehicle. The words of the section are wide enough to cover the case of even a person who is in charge of the vehicle which has been used in that manner. 1955 All 618 (619) [(S) AIR V 42 C 179] : 1955 Cri L Jour 1443 (DB). (Vehicle belonging to the Railway—Divisional Superintendent in charge of it — Vehicle running without fitness certificate and permit — Divisional Superintendent must be deemed to have allowed such use and held liable.) \* 1950 All 234 (236) [AIR V 37 C 89] : 51 Cri L

**124. Driving vehicle exceeding permissible weight.**

Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 72 or of the conditions of any permit issued thereunder, or in contravention of any prohibition or restriction imposed under section 74 shall be punishable for a first offence with fine which may extend to <sup>a</sup>[two hundred rupees], and for a second or subsequent offence with fine which may extend to <sup>b</sup>[one thousand rupees].

[a] *Substituted* for "one hundred rupees" by the Motor Vehicles (Amendment) Act, 1958 C of 1958, S. 91 [w. e. f. 16-2-1957]. [b] *Substituted* for "five hundred rupees", *ibid.*

**125. Driving uninsured vehicle.**

Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with

**Section 123 — Note 4 (contd.)**

Jour 734+1944 Nag 89 (90) [AIR V 31] : ILR (1944) Nag 173 : 45 Cri L Jour 469 (DB). (Person responsible for charging increased fares in contravention of the conditions of the permit commits an offence under S. 123.)

[3] A person cannot be held liable under the section for a contravention of S. 42 (1) merely because he is the manager of the offending transport company. But where it is shown that he was the person in charge of the motor vehicle which had been used in contravention of S. 42 (1) and had caused or allowed it to be so used he should be held liable under this section for the contravention. 1957 Raj 63 (64) [AIR V 44 C 25] : ILR (1956) 6 Raj 846 : 1957 Cri L Jour 230 (DB).

[4] Where a bus is used in contravention of the terms of the permit, the conductor who is an officer in charge of it can be convicted under S. 123 for having allowed it to be used in that manner. (55) 1955 Raj L W 38 (39).

[5] Section 42 (1) and S. 123 are controlled by the rules. Hence the driver cannot be held liable for the contravention of a rule from the due observance of which he has been statutorily exempted and responsibility placed solely on the conductor. 1943 Mad 347 (348) [AIR V 30] : 44 Cri L Jour 526 + 1957 Nag 94 (95) [AIR V 44 C 32] : I L R (1956) Nag 817 : 1957 Cri L Jour 1300 (1)+1943 Mad 283 (283, 284) [A I R V 30] : 44 Cri L Jour 479. (Overloading bus—Driver is protected from all responsibility by R. 218 of the Madras Motor Vehicles Rules when there is a conductor on the vehicle.)

[6] Where the rules provide that the driver and conductor shall both be responsible for overloading the bus both of them would be contravening not only the rules but also subs. (1) of S. 42 by overloading the bus and therefore be liable to punishment under S. 123 (1). 1958 Orissa 118 (123) [A I R V 45 C 32] : I L R (1958) Cut 113 : 1958 Cri L Jour 789 (DB).

[7] The conductor of a bus cannot be punished where the bus had been taken on a route which is not covered by the permit. 1955 N U C (Cal) 2873 [A I R V 42]+(55) 59 Cal W N 787 (790). (The offence however, rightly comes under S. 112 of the Act.)

[8] In a prosecution under S. 123 (1) read with S. 42 (1) the burden of proof lies on the prosecution to establish the contravention alleged by it. No presumption that there was

no permit for the vehicle in question or that the accused driver had contravened any condition of the permit can be made against him on the ground that he did not produce the permit in evidence. 1959 Ker 161 (163) [A I R V 46 C 55] : I L R (1959) Ker 37 : 1959 Cri L Jour 594 (DB).

[9] In a prosecution under S. 123, a statement by the co-accused (driver) that the accused was the conductor of the bus is no evidence against the accused. If the prosecution wish to rely upon that statement they should ask for separate trial and examine the co-accused as a witness. 1942 Cal 426 (426) [AIR V 29] : 43 Cri L Jour 558.

**5. Sentence.**—[1] In imposing a sentence under S. 123 the attitude of the accused is not relevant. (49) 7 J & K L R 182 (183).

[2] Where the offence is admittedly not his first offence, imposition of minimum sentence under Proviso to S. 123 (1) cannot be avoided on the ground that the accused is poor, that he pleaded guilty in ignorance of the provision imposing minimum sentence and that his conviction itself was recorded in appeal against an acquittal. 1959 Ker 248 (248) [AIR V 46 C 87] : 1959 Cri L Jour 1074 (DB). (AIR 1956 All 27, *Not followed*.)

[3] Where a man is charged with failing to get a permit from the Regional and Provincial Transport Authority, it is inequitable to exact the enhanced fine unless he has suffered a first conviction and after that conviction he has again offended. Hence where he is charged in several cases at one and the same time and convicted, he has not with knowledge of a conviction committed again the same offence. 1942 Lah 125 (126) [AIR V 29] : I L R (1943) Lah 106 : 43 Cri L Jour 673 (DB).

**Section 124 — Note 1**

[1] Where there is no proof that a lorry was overloaded with the knowledge of the owner he cannot be convicted under S. 124 for the contravention of S. 72 (3) (b). The knowledge of the owner cannot be presumed. (50) ILR (1950) All 784 (785).

**Section 125 — Note 1**

[1] A transferee of a motor vehicle using the same before he obtains the transfer of the insurance policy in the manner prescribed by the terms of the policy itself and rules relat-

imprisonment which may extend to three months, or with fine which may extend to \*[one thousand rupees], or with both.

[a] *Substituted* for "five hundred rupees" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 92 [w. e. f. 16-2-1957].

### 126. Taking vehicle without authority.

Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both :

Provided that no accused person shall be convicted under this section if the Court is satisfied that the accused acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefor.

### 127. Unauthorised interference with vehicle.

Whoever otherwise than with lawful authority or reasonable excuse enters or mounts any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

### \*[127A. Offences by companies.

(1) If the person contravening any provision of this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.* — For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 93 [w. e. f. 16-2-1957].

### OBJECTS AND REASONS

"It has been noticed that difficulty generally arises in fixing liability when any motor vehicle belonging to a company, etc., is involved in an offence under that Act. The amendment in this clause makes a precise provision in order to obviate this difficulty."

— S. O. R.

### 128. Power of arrest without warrant.

(1) A police officer in uniform may arrest without warrant any person who

#### Section 125 — Note 1 (contd.)

ing to the insurance of motor vehicles commits an offence punishable under S. 125 because in such circumstances he must be held to be using an uninsured car. 1960 Ker 341 (342) [A I R V 47 C 156] : 1960 Cri L Jour 1461.

#### Section 128 — Note 1

[1] Before sub-s. (2) of S. 128 of the Motor Vehicles Act applies, it is the duty of the prosecution to establish that the offending driver was required under the provisions of the Act to give his name and address. 1941 Lah 423 (424) [AIR V 28] : 43 Cri L Jour 127.

commits in his view an offence punishable under section 116 or section 117 or section 126 :

Provided that any person so arrested in connection with an offence punishable under section 117 shall be subjected to a medical examination by a registered medical practitioner within two hours of his arrest or shall then be released from custody.

(2) A police officer in uniform may arrest without warrant—

(a) any person who being required under the provisions of this Act to give his name and address refuses to do so, or gives a name or address which the police officer has reason to believe to be false, or

(b) any person concerned in an offence under this Act or reasonably suspected to have been so concerned, if the police officer has reason to believe that he will abscond or otherwise avoid the service of a summons.

(3) A police officer arresting without warrant the driver of a motor vehicle shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

## 129. Power of police officer to impound document.

(1) Any police officer authorised in this behalf or other person authorised in this behalf by the <sup>a</sup>[State Government] may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer authorised in this behalf <sup>a</sup>[or other person authorised in this behalf] by the <sup>a</sup>[State Government] may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence <sup>a</sup>[and the said Court shall, on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgment given under sub-section (3)].

(3) <sup>b</sup>[A police officer or other person] seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him <sup>c</sup>[or until such date as may be specified by the police officer or other person in the acknowledgment, whichever is earlier :

Provided that if any Magistrate, police officer or other person authorised by the <sup>a</sup>[State Government] in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgment for any reason for which the holder is not responsible, the Magistrate, police officer or other person, as the case may be, may extend the period of authorisation to drive to such date as may be specified in the acknowledgment.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1958 (C of 1958), S. 94 [w. e. f. 16-2-1957]. [b] *Substituted* for "A police officer", *ibid.* [c] *Substituted* for "or the Court has otherwise ordered", *ibid.*

## OBJECTS AND REASONS

*Amendments made in 1956.*—"By the provisions of sub-sections (2) and (3) of section 129, a driver whose licence has been impounded receives a special authorisation to drive until his licence is returned to him by the Court. This defeats the object of the law inasmuch

as it induces the offender to evade attendance in Court rather than appear before the Court. The proposed amendments are designed to provide a more satisfactory procedure, and to ensure that the innocent defaulter may be allowed extra time."

—S. O. R.

**\*[129A. Power to detain vehicles used without certificate of registration or permit.**

Any police officer authorized in this behalf or other person authorized in this behalf by the <sup>a</sup>[State Government] may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of <sup>b</sup>[section 22] or without the permit required by sub-section (1) of section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 20 [3-4-1942]. [b] *Substituted* for "sub-section (1) of section 22", *ibid*, 1956 (C of 1956), S. 95 [w. e. f. 16-2-1957].

**130. Summary disposal of cases.**

(1) A Court taking cognizance of an offence under this Act <sup>a</sup>[shall], unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he—

(a) may appear by pleader and not in person, or

(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

[a] *Substituted* for "may" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 96 [w. e. f. 16-2-1957].

**OBJECTS AND REASONS**

*Sub-section (1): Court shall state.*—"At present it is discretionary with the Courts either to try cases relating to minor offences under the Act summarily or to deal with them in accordance with the ordinary provisions of

the Criminal Procedure Code. The amendment by the substitution of 'shall' for 'may' is intended to take away the discretion and to make it obligatory for all cases covered by section 130 to be tried summarily." —S.O.R.

**131. Restriction on conviction.**

No person prosecuted for an offence punishable under section 115 or section 116 shall be convicted unless—

(a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

**Section 129A — Note 1**

[1] A vendee of a motor vehicle who has permission to hold the permit which had been granted to his vendor does not transgress S. 42 by running the vehicle before the transfer is endorsed on the permit—Hence the seizure of that vehicle under S. 129-A is unauthorised and illegal. 1953 Trav-Co 551 (552) [AIR V 40 C 210].

Code is illegal. That illegality would vitiate both the plea of guilty of the accused and his conviction based thereon. 1958 Mad 286 (287) [AIR V 45 C 88]; 1958 Cri L Jour 775. (Section 130 applies only to offences under the Act and that to when they do not fall under Part A of schedule V.)

**Section 131 — Note 1**

**Section 130 — Note 1**  
[1] The summons issued under S. 130 (1) in a case in which the offence complained of against the accused is under S. 279, Penal

[1] The applicability of S. 131 is not confined to those cases where the prosecution was initially under S. 115 or S. 116. It also applies to a case where the accused was originally prosecuted under some other section and as a

- (b) within fourteen days from the commission of the offence a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or
- (c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him :

Provided that nothing in this section shall apply where the Court is satisfied that—

- (a) the failure to serve the notice or summons referred to in this sub-section was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or
- (b) such failure was brought about by the conduct of the accused.

### 132. Jurisdiction of Courts.

No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

## CHAPTER X

### MISCELLANEOUS

### 133. Publication of and commencement of rules.

(1) Every power to make rules given by this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the Official Gazette, and shall, unless some later date is appointed, come into force on the date of such publication.

#### Section 131 — Note 1 (contd.)

result of that prosecution is convicted under S. 115 or S. 116 on the same facts. 1952 Bom 385 (386) [AIR V 39] : I.L.R. (1952) Bom 1100 : 1952 Cri L Jour 1446.

[2] The failure to prove even one of the conditions mentioned in this section renders the conviction under S. 115 or S. 116 unsustainable. 1958 Raj 347 (348) [AIR V 45 C 114] : 1959 Cri L Jour 87.

#### Section 132 — Note 1

[1] An offence under S. 86 of (J. and K.) Motor Vehicles Act is not a "civil offence" as mentioned in S. 69 of the Army Act as it is not triable by any Criminal Court in India. It is an offence in that State alone and triable by a criminal Court in the State. A criminal Court of the State of Jammu and Kashmir does not come within the definition of the "criminal Court" as defined in S. 3 (viii) of the Army Act and, therefore, the offence of which the accused is charged not being "civil offence" as defined in S. 3 (ii) of the Army Act is not triable by Court Martial but by a criminal Court of the State. 1960 J & K 139 (140) [AIR V 47 C 59] : 1960 Cri L Jour 1453.

#### Section 133 — Note 1

[1] Section 133 cannot transmute a rule framed under the Act into a section enacted by the legislature. The validity of the rule must depend on its being *intra vires* of the

Act under which it is framed. (54) I.L.R. (1954) Trav-Co 771 (777). (Rule 156 (2) of Travancore-Cochin Motor Vehicles Rules, 1952 providing for an appeal from an appellate order of the Central Board to Government is invalid being in contravention of S. 64.)

[2] Sub-s. (3) in providing for the placing of the rules made before the legislature has not made that a condition precedent or a condition subsequent to the coming into force of the rule. Its provisions are only directory and the non-compliance therewith will not render the rules made under the section invalid. 1958 Andh 129 (137) [S] AIR V 43 C 45] : I.L.R. (1956) Andh 800 (DB).

[3] In view of proviso 2 to S. 6 Part B States (Laws) Act, the rules framed under Rajasthan Motor Vehicles Ordinance which came into force from 30.3.1951, were valid, even though they were not placed before the legislature when it met, for the first time, in March 1952. 1955 Raj 19 (22) [AIR V 42 C 8] : I.L.R. (1953) 3 Raj 931 (DB).

[4] The Travancore-Cochin Motor Vehicles Rules, 1950 were framed under S. 64 of the Travancore-Cochin Motor Vehicles Act, 1125 which did not contain any provision corresponding to S. 133 (3) of the Central Act and they have been specifically saved by the proviso to S. 6 of the Part B States (Laws) Act, 1951. Hence those rules did not cease to be operative on 1.4.1951 with the extension of the Motor Vehicles Act, 1939 to the State on the ground that the requirements of S. 133 (3)



(3) All rules made under this Act by the Central Government or by any <sup>a</sup>[State Government] shall be laid for not less than fourteen days before <sup>a</sup>[Parliament or <sup>b</sup>[the State Legislature] ], as the case may be, as soon as possible after they are made, and shall be subject to such modifications <sup>c</sup>[as Parliament or such Legislature] may make during the session in which they are so laid.

[a] *Substituted* for "the Central or Provincial Legislature", by A. L. O., 1950. [b] *Substituted* for "the Legislature of a Part A State", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [c] *Substituted* for "as the Legislature", by A. L. O., 1950.

**<sup>a</sup>[133A. Appointment of motor vehicles officer.**

(1) The <sup>a</sup>[State Government] may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(3) The <sup>a</sup>[State Government] may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 21 [3-4-1942].

**<sup>a</sup>[134. Effect of appeal and revision on orders passed by original authority.**

(1) Where an appeal has been preferred or an application for revision has been made against any order passed by an original authority under this Act, the appeal or the application for revision shall not operate as a stay of the order passed by the original authority and such order shall remain in force pending the disposal of the appeal or the application for revision, as the case may be, unless the prescribed appellate authority or revisional authority otherwise directs.

**Section 133 — Note 1 (contd.)**

of the Act were not complied with. 1954 Trav-Co 140 (141) [AIR V 41 C 49].

[5] A party who desires to challenge the validity of the amendment of rule on the ground that there was no compliance with the provisions of S. 133 of this Act read with S. 23 of the General Clauses Act must make an averment to that effect in his pleadings. In the absence of such an averment he will not be allowed to urge that contention at the time of the hearing of the case. 1959 J & K 141 (142) [AIR V 46 C 59] (DB).

[6] In a case decided under the Motor Vehicles Act of 1914 it was held that the Rules framed under that Act by the Government did not apply proprio vigore to the subjects of Indian States but if there was any reciprocity agreement between the Indian Government and the Government of the State they became binding on those subjects by the force of that agreement. ('39) 1939 Nag L Jour 355 (355).

**Section 133A — Note 1**

[1] The individual who is invested with the authority and is required to perform the duties incidental to an office is an officer. Hence the Regional Transport officer, who is an individual invested with the authority and required

to perform the duties incidental to an office, is an officer within S. 133A. 1959 Andh-Pra 413 (416) [A I R V 46 C 117] : 1 L R (1959) Andh-Pra 375 (FB).

[2] The Regional Transport Officer who is administratively a subordinate of Transport Officer must be taken to be his subordinate for the purposes of S. 44A also. The fact that no rule has been made under S. 133A laying down such subordination is not material. 1960 S C 1191 (1198) [AIR V 47 C 208]. (AIR 1957 Mad 599, *Overruled.*) \* 1959 Andh-Pra 413 (416) [A I R V 46 C 117] : 1 L R (1959) Andh-Pra 375 (FB).

**Section 134 — Note 1**

[1] An order passed on an application which fails to furnish the particulars required under S. 46 cannot be saved by the provisions of sub-section (2). The omission is not a mere irregularity in view of the mandatory nature of S. 46. 1960 Mys 90 (93) [AIR V 47 C 25].

[2] Sub-section (2) neither applies to the orders of a competent authority under the Act which are wholly without jurisdiction nor affects the powers of the High Court to interfere with such orders under Article 226 of the Constitution. 1959 Mys 120 (122) [AIR V 46 C 49].



(2) No order made by a competent authority under this Act shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings, unless it appears to the prescribed appellate authority or revisional authority, as the case may be, that such error, omission or irregularity has, in fact, occasioned a failure of justice.]

[a] Substituted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 97 [w. e. f. 16-2-1957].

## THE FIRST SCHEDULE

### FORMS

#### \*FORM A

[See section 7 (2)]

*Form of application for licence to drive a motor vehicle*

#### I

##### *Application*

I apply for a licence to enable me to drive \*as a paid employee \*public service vehicles, \*goods vehicles, the vehicles I wish to drive being of the following class (es)\*—

- \*(a) motor cycles,
- \*(b) invalid carriages,
- \*(c) light motor vehicles,
- \*(d) medium motor vehicles,
- \*(e) heavy motor vehicles,
- \*(f) road rollers,
- \*(g) a vehicle of a special type (description attached) constructed or adapted to be driven by me.

\*Strike out whichever is not applicable.

[a] Substituted for the original Form by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 98 (a) [w.e.f. 16-2-1957].

#### II

*Particulars to be furnished by the applicant.*

1. Full name and name of father or husband .....
2. Permanent address.....
3. Temporary address.....
4. Age at the date of application .....
5. Have you previously held licence? If so, give particulars of all licences held. ....
6. Has any licence held by you been endorsed? If so, give particulars and the date of each endorsement.....
7. Have you been disqualified for obtaining a licence to drive? If so, for what reason.....
8. Have you been subjected to driving test as to your fitness or ability to drive a vehicle in respect of which a licence to drive is applied for? If so, give date, testing authority and result of test.....

#### III

*Declaration as to physical fitness of applicant and knowledge of driving regulations and traffic signs.*

The applicant is required to answer "Yes" or "No" in the space provided opposite each question.

- (a) Do you suffer from epilepsy, or from sudden attacks of disability, giddiness or fainting?
- (b) Are you able to distinguish with each eye at a distance of \*[25 metres] in good daylight (with glasses, if worn) a motor car number plate containing seven letters and figures?

- (c) Have you lost either hand or foot or are you suffering from any defect in movement, control or muscular power of either arm or leg ?
- (d) Can you readily distinguish the pigmentary colours red and green ?
- (e) Do you suffer from night blindness ?
- (f) Are you so deaf as to be unable to hear the ordinary sound signals ?
- (g) Do you suffer from any other disease or disability likely to cause your driving of a motor vehicle to be a source of danger to the public ?
- (h) Are you cognisant of the provisions of sections 81, 82, 83, 84 and 85 of, and the Tenth Schedule to, the Motor Vehicles Act, 1939 ?
- (i) Do you know the meaning of the traffic signs specified in the Ninth Schedule to the Motor Vehicles Act, 1939 ?

[a] *Substituted* for "25 yards" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 5 [w.e.f. 1-1-1961].

I declare that to the best of my knowledge and belief the particulars given in Section II and the declaration made in Section III hereof are true.

NOTE 1. — An applicant who answers "yes" to any of the questions (a), (c), (e), (f) and (g), or "no" to either of the questions (b) and (d) should amplify his answer with full particulars, and may be required to give further information relating thereto.

NOTE 2. — An applicant who answer "yes" to questions (b), (c), (d), (h) and (i) in the declaration and "no" to the other questions may claim to be subjected to a test as to his competency to drive vehicles of a specified class or classes.

NOTE 3.—The provisions of the Motor Vehicles Act, 1939, referred to in question (h) are reproduced on the attached sheet, which should be detached and kept for subsequent guidance.

Dated.....19 .

*Signature or thumb impression of applicant.*

NOTE.—The fee for the issue of a driving licence is Rs. 11.

*Certificate of test of ability to drive*

The applicant has passed/failed in the test specified in the Third Schedule to the Motor Vehicles Act, 1939. The test was conducted on a (here enter description of vehicle)

on date

Signature of Testing Authority.

Duplicate signature or thumb impression  
of applicant.]

<sup>a</sup>[FORM AA  
(See section 8A)]

*Form of application for the addition of a new class of vehicle to a driving licence.*

I hereby apply for the addition of the following class/classes of motor vehicle to the attached licence :

- (a) motor cycles,
- (b) invalid carriages,
- (c) light motor vehicles,
- (d) medium motor vehicles,
- (e) heavy motor vehicles,
- (f) road rollers,
- (g) a vehicle of a special type (description attached) constructed or adapted to be driven by me.

\* I enclose,

(a) a medical certificate,

(b) three copies of a recent photograph.

\* Required only where the applicant is not entitled to drive as a paid employee or to drive a transport vehicle and now wishes to do so. Strike out if not applicable.

Dated .....19 .

*Signature or thumb impression of applicant.*

NOTE. — No fee other than a fee for a test of competence to drive is chargeable for the addition of a new class of vehicle to a driving licence.

*Certificate of test of ability to drive.*

The applicant has passed/failed in the test specified in the Third Schedule to the Motor Vehicles Act, 1939. The test was conducted on a (here enter description of vehicle)

on date

Signature of Testing Authority.

Duplicate signature or thumb impression of applicant.]

\* Strike out whichever is not applicable.

[a] Inserted by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 98 (b) [w. e. f. 16-2-1957].

#### \*[FORM B

[See section 11 (2)]

*Form of application for the renewal of driving licence.*

I hereby apply for the renewal of my driving licence which is attached, and particulars of which are as follows :

(a) Number.

(b) Date of issue.

(c) Licensing Authority by which licence was issued.

My present address is

If this address is not entered on the licence I do/do not wish that it should be so entered.

If the licence is not attached, reasons why it is not available.

If the licence was not renewed within 30 days of the date of expiry full reasons for the delay.

The renewal of the licence has not been refused by any licencing authority.

I hereby declare that I am not subject to any disease or disability likely to cause my driving of motor vehicles of the classes entered in my licence to be a source of danger to the public.

Dated.....19 .

*Signature or thumb impression of applicant.*

*Address*

NOTE. — The fee for the renewal of a licence is fixed by section 11 of the Motor Vehicles Act, 1939, reproduced on the reverse.

[a] Substituted for the original Form by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 98 (c) [w. e. f. 16-2-1957].

(Reverse)

### 11. Renewal of driving licences.

(1) Any licensing authority may, on an application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry :

Provided that in any case where the application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal.

(2) An application for the renewal of a driving licence shall be made in Form B as set forth in the First Schedule and shall contain the declaration required by that form: provided that where the applicant does not or is unable to subscribe to the said declaration, the provisions of sub-section (5) of section 7 shall apply.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after, the date of its expiry, the fee payable for such renewal shall be nine rupees.

(3A) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be eleven rupees:

Provided that the fee referred to in sub-section (3) may be accepted by the licencing authority, if it is satisfied that the holder of the driving licence was prevented by good cause from applying within the time specified in that sub-section:

Provided further that if the application is made more than five years after the licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive specified in the Third Schedule.

(4) When the authority renewing the driving licence is not the authority which issued the driving licence, it shall intimate the fact of renewal to the authority which issued the driving licence.]

### FORM C

[See section 7 (3) and section 12.]

*Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee.*

(To be filled up by a registered medical practitioner.)

1. What is the applicant's apparent age? .....
2. Is the applicant, to the best of your judgment, subject to epilepsy, vertigo or any mental ailment likely to affect his efficiency? .....
3. Does the applicant suffer from any heart or lung disorder which might interfere with the performance of his duties as a driver? .....
4. (a) Is there any defect of vision? If so, has it been corrected by suitable spectacles? .....
- \*[(b) Can the applicant readily distinguish the pigmentary colours red and green? .....
- (c) Does the applicant suffer from night blindness?] .....
- <sup>b</sup>[(d)] Does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary sound signals? .....
5. Has the applicant any deformity or loss of members which would interfere with the efficient performance of his duties as a driver? .....
6. Does he show any evidence of being addicted to the excessive use of alcohol, tobacco or drugs? .....
7. Is he, in your opinion, generally fit as regards (a) bodily health, and (b) eyesight? .....
8. Marks of identification. ....

I certify that to the best of my knowledge and belief the applicant.....  
.....is the person hereinabove described and that the  
attached photograph is a reasonably correct likeness.

(Signature).....

[Space for photograph.]

Name .....

Designation .....

NOTE.—Special attention should be directed to distant vision and to the  
condition of the arms and hands and the joints of both extremities.

[a] *Substituted* for the original question (b) by the Motor Vehicles (Amendment) Act,  
1939 (XL of 1939), S. 4 [29-9-1939]. [b] *Re-lettered, ibid.*

### FORM D

[See section 8 (1).]

*Driving Licence.*

No.....

19.....

(Name).....

son/daughter of (father's name).....

of (permanent address).....

(temporary address).....

.....

.....

Photograph  
if necessary.

*Signature or thumb impression.*

is licensed to drive, throughout <sup>a</sup>[India], vehicles of the following description<sup>\*</sup> :—

(a) motor cycle,

<sup>b</sup>[(b) invalid carriages,

(c) light motor vehicles,

(d) medium motor vehicles,

(e) heavy motor vehicles,

(f) road rollers,

(g) a motor vehicle hereunder described :—]

.....

He is also authorised to drive as a paid<sup>c</sup> employee<sup>\*</sup> <sup>a</sup>[a transport vehicle].

This licence is valid from ..... to

<sup>\*</sup>[To be struck out if inapplicable.]

Dated.....19 .

*Signature and designation of Licensing  
Authority.*

[a] *Substituted* for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3  
and Sch. [1-4-1951]. [b] *Substituted* for items (b) to (k), by the Motor Vehicles (Amend-  
ment) Act, 1956 (C of 1956), S. 98 (d) [w. e. f. 16-2-1957]. [c] *Inserted, ibid*

<sup>\*</sup>[Authorisation to drive a transport vehicle.]

<sup>b</sup>[So long as this licence is valid and is renewed from time to time, the  
holder is authorised to drive a transport vehicle.]

State of.....

Date.....19 .

*Signature and designation of  
prescribed authority.]*

This licence is hereby renewed up to

Signature of Licensing  
Authority.

the.....day of.....19 .  
the.....day of.....19 .  
the.....day of.....19 .  
the.....day of.....19 .  
the.....day of.....19 .

ENDORSEMENTS

Date.	Section and Rule.	Fine or other punishment.	Signature of Endorsing Authority.

[a] Substituted for the heading "Authorisation to drive a public service vehicle" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 98 (d) [w. e. f. 16-2-1957].  
[b] Substituted by the Repealing and Amending Act, 1960 (LVIII of 1960), S. 3 & Sch. II [26-12-1960].

FORM E.

[See section 24 (1).]

*Form of Application for the Registration of a Motor Vehicle.*

- <sup>a</sup>[1. Full name, name of father or husband, and address of person to be registered as registered owner.....  
1A. Age of the person to be registered as registered owner.....  
1B. Name and address of the person from whom the vehicle was purchased.....]  
2. Class of vehicle.....  
3. Type of body.....  
4. Maker's name .....  
5. Year of manufacture.....  
6. Number of cylinders.....  
7. Horse power.....  
8. Maker's classification or, if not known, wheel-base.....  
9. Chassis number.....  
10. Engine number .....  
11. Seating capacity (including driver).....  
12. Unladen weight.....  
13. Particulars of previous registration and registered number (if any).....  
Additional particulars to be completed only in the case of transport vehicles other than motor cabs—  
<sup>b</sup>[13A. I hereby declare that this vehicle has not been registered in any State in India.  
Additional particular to be completed only in the case of transport vehicles other than motor cars.  
13B. Colour or colours of body, wings and front end.....]  
14. Number, description and size of tyres—  
(a) front axle.....  
(b) rear axle .....  
(c) any other axle.....  
15. Maximum laden weight.....<sup>c</sup>[kgms.]

16. Maximum axle weight <sup>b</sup>[(to be furnished in the case of heavy motor vehicles only)]—

(a) front axle.....<sup>c</sup>{kgms.}

(b) rear axle.....<sup>c</sup>{kgms.}

(c) any other axle.....<sup>c</sup>{kgms.}

The above particulars are to be filled in for a rigid frame motor vehicle of <sup>a</sup>[two or more axles, for an articulated vehicle of three or more] axles, or, to the extent applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle, the following particulars are to be furnished for each such trailer:—

17. Type of body.....

18. Unladen weight .....

19. Number, description and size of tyres on <sup>e</sup>[each] axle.....

20. Maximum axle weight <sup>f</sup>[in respect of each axle (to be furnished in the case of heavy motor vehicles only)].....

Date.....19 ..

Signature of Applicant.

*Explanation.* — An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is super-imposed on and part of the weight of the trailer is borne by the tractor.

NOTE. — The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with .....

Signature of owner.

Signature of Hire Purchase Company.

[a] Substituted for entry 1, by the Motor Vehicles (Amendment) Act, 1958 (C of 1958), S. 98 (e) [w. e. f. 16-2-1957]. [b] Inserted, *ibid.* [c] Substituted for "lbs." by the Motor Vehicles (Second Amendment) Act, 1960 (11 of 1960), S. 5 [w. e. f. 1-1-1961]. [d] Substituted for "two or three axles, for an articulated vehicle of three or more", by Act C of 1958, S. 98. [e] Substituted for "the", *ibid.* [f] Added, *ibid.*

## FORM F

\*[\* \* \* \* \*]

[a] Form F of the First Schedule is omitted by the Motor Vehicles (Amendment) Act, 1958 (C of 1958), S. 98 (f) [This amendment has not up to 2-11-1960 been brought into force]. The old form was as follows:—

### "FORM F

[See Section 36 (1).]

*Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.*

Certified that the.....vehicle Chassis No.....and Engine No..... is designed for maximum weights as follows when fitted with the tyre-equipment specified below:—

Maximum laden weight.....lbs.

Maximum weight front axle.....lbs.

Maximum weight rear axle.....lbs.

Maximum weight any other axle.....lbs.

Tyres—

Front wheels.....

Rear wheels.....

Other wheels.....

Date.....19 ..

Signature of maker or  
authorised assembler.

*Special certificate to be furnished by an assembler.*

Certified that I am authorised by the maker of the vehicle described above to issue this certificate.

Signature of authorised assembler."

## FORM G

[See section 24 (2).]

*Form of Certificate of Registration.*

Registered number.....

Brief description of vehicle,

(e.g., Ford touring car, Chevrolet 22 seater bus, Albion lorry, trailer, etc.)

Name, name of father, <sup>a</sup>[or husband] and address of Registered Owner .....*Signature of registering authority.*

Transferred to

*Signature of registering authority.*

Transferred to

*Signature of registering authority.**Detailed description.*

1. Class of vehicle.....

2. Maker's name.....

3. Type of body.....

4. Year of manufacture .....

5. Number of cylinders.....

6. Chassis number.....

7. Engine number.....

8. Horse power.....

9. Maker's classification or, if not known, wheel-base.....

10. Seating capacity (including driver).....

11. Unladen weight.....

Additional particulars in the case of all transport vehicles other than motor cabs—

<sup>a</sup>[Additional particular in the case of all transport vehicles other than motor cars.

11A. Colour or colours of body, wings and front end.....]

12. Registered laden weight.....

13. Number, description and size of tyres—

(a) front axle.....

(b) rear axle.....

(c) any other axle.....

14. Registered axle weight <sup>a</sup>[(in the case of heavy motor vehicles only)]—(a) front axle.....<sup>b</sup>[kgms.](b) rear axle.....<sup>b</sup>[kgms.](c) any other axle.....<sup>b</sup>[kgms.]

Additional particulars of alternative or additional trailer or trailers registered with an articulated vehicle—

15. Type of body.....

16. Unladen weight.....<sup>b</sup>[kgms.]17. Number, description and size of tyres on <sup>c</sup>[each] axle.....18. Registered axle weight <sup>d</sup>[in respect of each axle (in the case of heavy motor vehicles only)].....<sup>b</sup>[kgms.]Date.....19 . *Signature of registering authority.*

NOTE.—The motor vehicle above described is held by the person registered as the registered owner under a hire purchase agreement with.....

Date .....19 . *Signature of registering authority.*

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 98 (g) [w. e. f. 16-2-1957]. [b] *Substituted* for "lbs." by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 5 [w. e. f. 1-1-1961]. [c] *Substituted* for "the", by Act C of 1956, S. 98. [d] *Added, ibid.*



## FORM H.

[See <sup>a</sup>[section 38].]*Certificate of fitness (applicable in the case of transport vehicles only.)*

Vehicle No..... is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made thereunder. This certificate will expire on.....

Date.....19 .

Signature and designation of  
Inspecting authority.

The certificate of fitness is hereby renewed—

up to.....19 .

up to.....19 .

up to.....19 .

Signature of Inspecting Authority.

[a] Substituted for "sections 38 and 39 (2)" by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 98 (h) [w. e. f. 16-2-1957].

## THE SECOND SCHEDULE

[See section 7 (5).]

## I. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A MOTOR VEHICLE.

1. Epilepsy.
2. Lunacy.
3. Heart disease likely to produce sudden attacks of giddiness or fainting.
4. Inability to distinguish with each eye at a distance of <sup>a</sup>[twenty-five metres] in good day light (with the aid of glasses, if worn) a series of seven letters and figures in white on a black ground of the same size and arrangement as those of the registration mark of a motor car.
5. A degree of deafness which prevents the applicant from hearing the ordinary sound signals.
- <sup>b</sup>[6. Inability readily to distinguish the pigmentary colours red and green.]
7. Night-blindness.

## II. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A PUBLIC SERVICE VEHICLE.

1. Leprosy.

[a] Substituted for "twenty-five yards" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 6 [w. e. f. 1-1-1961]. [b] Substituted for the original item, by the Repealing and Amending Act, 1939 (XL of 1939), S. 5 [29-9-1939].

## THE THIRD SCHEDULE

[See sections 7 (6) (a) and 17 (6).]

## TEST OF COMPETENCE TO DRIVE

## PART I

The candidate shall satisfy the person conducting the test that he is able to—

1. Start the engine of the vehicle.
2. Move away straight ahead or at an angle.
3. Overtake, meet or cover the path of other vehicles and take an appropriate course.
4. Turn right and left corners correctly.
5. Stop the vehicle in an emergency and normally, and in the latter case bring it to rest at an appropriate part of the road.
6. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or left.

7. Cause the vehicle to face in the opposite direction by means of forward and reverse gears.
8. Give by hand and by mechanical means (if fitted to the vehicle), or, in the case of a disabled driver for whom it is impracticable or undesirable to give signals by hand, by mechanical means, in a clear and unmistakable manner, appropriate signals at appropriate times to indicate his intended actions.
9. Act correctly and promptly on all signals given by traffic signs and traffic controllers, and take appropriate action on signs given by other road users.

NOTE.—(i) Requirements 6 and 7 are not applicable in the case of a motor cycle or tricycle not equipped with means for reversing.

(ii) Requirements 6, 7 and 8 are not applicable in the case of invalid carriages.

## PART II

The candidate shall satisfy the person conducting the test that he is cognizant of the provisions of sections 81, 82, 83, 84 and 85 and of the Tenth Schedule; that he knows the meaning of the traffic signs specified in the Ninth Schedule; and, if he has not been medically examined, that he is not so deaf as to be unable to hear the ordinary sound signals, and is able to distinguish with each eye at a distance of "[twenty-five metres]" in good day light (with the aid of glasses, if worn) a registration mark containing seven letters and figures.

[a] Substituted for "twenty-five yards" by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 7 [w. e. f. 1-1-1961].

## THE FOURTH SCHEDULE

[See sections 14 (1) and 39 (1) and (3).]

**AUTHORITIES ENTITLED TO GRANT LICENCES TO DRIVE, AND TO REGISTER MOTOR VEHICLES, THE PROPERTY "[OR FOR THE TIME BEING UNDER THE EXCLUSIVE CONTROL]" OF THE CENTRAL GOVERNMENT, AND REGISTRATION MARKS FOR SUCH VEHICLES.**

### PART A

The authorities specified in the second column may grant licences in respect of vehicles, the property "[or for the time being under the exclusive control]" of the Department of the Central Government specified in the first column.

- |   |  |
|---|--|
| Defence Department of the Central Government. | <ol style="list-style-type: none"> <li>1. District Commanders.</li> <li>2. Commanders of independent brigades.</li> <li>3. Officers commanding units having mechanically propelled vehicles in their charge.</li> <li>4. Commanders, Royal Engineers.</li> </ol> |
|---|--|

### PART B

The authorities specified in the second column may register motor vehicles, the property "[or for the time being under the exclusive control]" of the Department of the Central Government specified in the first column, and may grant certificates of fitness in respect of such vehicles.

- |   |   |
|---|---|
| Defence Department of the Central Government. | The Master General of the Ordnance in India "[or any person authorised by him in this behalf]." |
|---|---|

## PART C

*Registration marks for vehicles registered under section 39.*

\*[A broad arrow followed by not more than six figures, or a broad arrow followed by a single letter and not more than <sup>4</sup>[six figures, or a broad arrow followed by two letters and not more than five figures].]

[a] *Inserted* by the Motor Vehicles (Amendment) Act, 1942 (XX of 1942), S. 23 [3-4-1942]. [b] *Added, ibid.* [c] *Substituted* for "A broad arrow above two figures representing the last two figures of the year of purchase of the vehicle followed by not more than four figures", *ibid.* [d] *Substituted* for "five figures", *ibid.* 1956 (C of 1956), S. 99 [w. e. f. 16-2-1957].

## THE FIFTH SCHEDULE

[See sections 19 (2) and (3) and 130.]

OFFENCES ON CONVICTION OF WHICH AN ENDORSEMENT SHALL BE  
MADE ON THE LICENCE OF THE PERSON AFFECTED.

## PART A

1. Driving recklessly or dangerously (section 116).
2. Driving while under the influence of drink or drugs (section 117).
3. Abetment of an offence under section 116 or 117 (section 119).
4. Taking part in unauthorised race or trial of speed (section 120).
5. Driving when disqualified (section 18).
6. Obtaining or applying for a licence without giving particulars of endorsement (section 114).
7. Failing to stop on the occurrence of an accident (section 87).
8. Altering a licence or using an altered licence.
9. Any offence punishable with imprisonment in the commission of which a motor vehicle was used.

## PART B

1. Driving without a licence, or without a licence which is effective, or without a licence applicable to the vehicle driven (section 3).
2. Allowing a licence to be used by another person [section 6 (2)].
3. Driving at excessive speed (section 115).
4. Driving when mentally or physically unfit to drive (section 118).
5. Abetment of an offence punishable under section 115 or 118.
6. Refusing or failing within specified time to produce licence (section 86).
7. Failing to stop when required (section 87).
8. Driving an unregistered vehicle (section 22).
9. Driving a transport vehicle not covered by a certificate of fitness (section 38).
10. Driving in contravention of any rule made under section 70 (2) (g) relating to speed governors.
11. Driving a vehicle exceeding the permissible limit of weight (section 124).
12. Failure to comply with a requisition made under section 73.
13. Using a vehicle in unsafe condition (section 121).
14. Driving a transport vehicle in contravention of section 42.

## \*[THE SIXTH SCHEDULE

[See sections 24 (3) and 29 (2).]

## REGISTRATION MARKS

One of the groups of letters specified in the second column followed by any one other letter shall be used as the registration mark for a vehicle in the State specified in the first column.

Andhra Pradesh.

AP, AD

Assam.

AS

Bihar.	BR
<sup>b</sup> [Gujarat.	GJ, GT]
Bombay.	BM, BY
Kerala.	KL
Madhya Pradesh.	MP, CP
Madras.	MD, MS
Mysore.	MY
Orissa.	OR
Punjab.	PN, PU
Rajasthan.	RJ
Uttar Pradesh.	UP, US
West Bengal.	WB, WG
Delhi.	DL
Himachal Pradesh.	HI
Manipur.	MN
Tripura.	TR
Andaman and Nicobar Islands.	AN
Laccadive, Minicoy and Amindivi Islands.	LC, MA
<sup>c</sup> [Pondichery.	PY]

NOTE. — These letters shall be followed by not more than four figures, and the letters and figures shall be shown—

1. In the case of Transport vehicles . . . . . In black on a white ground.
2. In the case of temporary registrations (section 25) . . . . . In red on a yellow ground.
3. In the case of registration marks allotted to dealers [section 41 (2) (k)] . . . . . In white on a red ground.
4. In other cases . . . . . In white on a black ground.]

[a] *Substituted* for the original Schedule by the Motor Vehicles (Amendment) Act, 1959 (C of 1956), S. 100 [w. e. f. 16-2-1957]. [b] *Inserted* by Gujarat A. L. O., 1960. [c] *Inserted* by the Pondichery (Application of M. V. Act) Order, 1959 (as amended in 1960), S. 2 [19-6-1959].

### THE SEVENTH SCHEDULE

[a] \* \* \* \* \*

[a] The Seventh Schedule is *omitted* by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 101 [this amendment has up to 2-11-1960 not been brought into force]. The Seventh Schedule was as follows :—

### THE SEVENTH SCHEDULE

[*See* section 37 (2).]

#### MAXIMUM AXLE WEIGHTS PERMISSIBLE FOR TRANSPORT VEHICLES

TABLE A.

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—							The permissible weight in pounds is—
5'00-17	.	.	.	.	.	.	980
5'25-17	.	.	.	.	.	.	1,000
5'25-18	.	.	.	.	.	.	1,100
5'50-17	.	.	.	.	.	.	1,140
5'50-18	.	.	.	.	.	.	1,195
5'50-20	.	.	.	.	.	.	1,225
6'00-16	.	.	.	.	.	.	1,200
6'00-17	.	.	.	.	.	.	1,350
6'00-18	.	.	.	.	.	.	1,450

TABLE A (contd.)

For each low pressure pneumatic  
tyre, fitted to a wheel on the  
axle, of a nominal size—

The permissible  
weight in  
pounds is—

6'00-20	.	.	.	.	.	.	1,550
6'25-16	.	.	.	.	.	.	1,300
6'50-16	.	.	.	.	.	.	1,400
6'50-17	.	.	.	.	.	.	1,550
6'50-18	.	.	.	.	.	.	1,700
6'50-20	.	.	.	.	.	.	1,850
7'00-15	.	.	.	.	.	.	1,500
7'00-16	.	.	.	.	.	.	1,675
7'00-17	.	.	.	.	.	.	1,850
7'00-18	.	.	.	.	.	.	2,050
7'00-20	.	.	.	.	.	.	2,200
7'50-15	.	.	.	.	.	.	1,700
7'50-16	.	.	.	.	.	.	2,050
7'50-17	.	.	.	.	.	.	2,150
7'50-18	.	.	.	.	.	.	2,450
7'50-20	.	.	.	.	.	.	2,650
7'50-24	.	.	.	.	.	.	2,650
8'25-18	.	.	.	.	.	.	2,000
8'25-20	.	.	.	.	.	.	3,100
8'25-22	.	.	.	.	.	.	3,100
8'25-24	.	.	.	.	.	.	3,100
9'00-15	.	.	.	.	.	.	2,650
9'00-18	.	.	.	.	.	.	3,300
9'00-20	.	.	.	.	.	.	3,550
9'00-22	.	.	.	.	.	.	3,550
9'00-24	.	.	.	.	.	.	3,650
9'75-15	.	.	.	.	.	.	3,175
9'75-18	.	.	.	.	.	.	3,900
9'75-20	.	.	.	.	.	.	4,200
9'75-22	.	.	.	.	.	.	4,200
9'75-24	.	.	.	.	.	.	4,400
10'50-20	.	.	.	.	.	.	4,850
10'50-22	.	.	.	.	.	.	5,000
10'50-24	.	.	.	.	.	.	5,200
11'25-20	.	.	.	.	.	.	5,450
11'25-22	.	.	.	.	.	.	5,800
11'25-24	.	.	.	.	.	.	6,050

TABLE B.

For each high pressure pneumatic  
tyre, fitted to a wheel on the  
axle, of a nominal size—

The permissible  
weight in  
pounds is—

30 x 5	.	.	.	.	.	.	2,000
33 x 5	.	.	.	.	.	.	2,000
34 x 5	.	.	.	.	.	.	2,000
35 x 5	.	.	.	.	.	.	2,000
32 x 6	.	.	.	.	.	.	2,650
34 x 6	.	.	.	.	.	.	2,650
36 x 6	.	.	.	.	.	.	2,650
32 x 6½	.	.	.	.	.	.	2,950
32 x 7	.	.	.	.	.	.	3,000
34 x 7	.	.	.	.	.	.	3,300
36 x 7	.	.	.	.	.	.	3,900
38 x 7	.	.	.	.	.	.	3,300
36 x 8	.	.	.	.	.	.	4,000
38 x 8	.	.	.	.	.	.	4,200
40 x 8	.	.	.	.	.	.	4,400
38 x 9	.	.	.	.	.	.	4,850
40 x 9	.	.	.	.	.	.	5,100

Table B.—(contd.)

For each high pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
42 × 9 .	5,300
40 × 10 .	5,700
44 × 10 .	6,150

*Explanation.*—The figures "5'00-17", etc., in Table A represent, respectively, the nominal sectional diameter of the tyre and the diameter of the wheel rim; and the figures "30 × 5", etc., in Table B represent, respectively the over-all diameter of wheel and tyre and the nominal sectional diameter of the tyre, all figures being in inches. The actual sectional diameter of the tyre when mounted on its appropriate rim and inflated shall in no case be less than the nominal sectional diameter.

**NOTE.**—Tyres may be calibrated in so called metric sizes, for example, "170 × 20". In that case the first number represents the sectional diameter of the tyre in millimeters and the second number represents the diameter of the rim in inches. The permissible weight in pounds for each such tyre shall be determined by dividing the nominal sectional diameter of the tyre in millimetres by the figure 25·4, the quotient being the nominal sectional diameter in inches. The permissible weight given in Table A for the nearest equivalent nominal sectional diameter in inches and the actual rim-diameter shall be the permissible weight for that tyre."

## •THE EIGHTH SCHEDULE

[See section 71]

### LIMITS OF SPEED FOR MOTOR VEHICLES

Class of vehicle	Maximum speed per hour b [Kilometres]
(1) If all the wheels of the vehicle are with pneumatic tyres and the vehicle is not drawing a trailer :—	
(a) if the vehicle is a light motor vehicle or a motor cycle ...	No limit
(b) if the vehicle is a medium motor vehicle ...	b [60]
(c) if the vehicle is a heavy motor vehicle and a public service vehicle ...	b [50]
(d) if the vehicle is a heavy motor vehicle but not a public service vehicle ...	b [40]
(2) If the vehicle is drawing not more than one trailer (or in the case of artillery equipment, not more than two trailers) and all the wheels of the drawing vehicle and the trailer are fitted with pneumatic tyres :—	
(a) if the vehicle is a light motor vehicle and the trailer being two-wheeled has a laden weight not exceeding c [800 kilograms] ...	b [60]
(b) if the vehicle is a light motor vehicle and the trailer has more than two wheels or a laden weight exceeding c [800 kilograms] ...	b [50]
(c) if the vehicle is a medium motor vehicle ...	b [40]
(d) if the vehicle is a heavy motor vehicle ...	b [35]
(3) Any case not covered by entry (1) or entry (2) ...	b [25]

[a] *Substituted* for the original schedule by the Motor Vehicles (Amendment) Act, 1956 (C of 1956), S. 102 [w. e. f. 16-2-1957]. [b] *Substituted* for the word "Miles" and the figures "35, 30, 25, 20 and 15," wherever they occurred, by the Motor Vehicles (Second Amendment) Act, 1960 (LI of 1960), S. 8 [w. e. f. 1-1-1961]. [c] *Substituted* for "1,700 pounds avoirdupois," *ibid.*

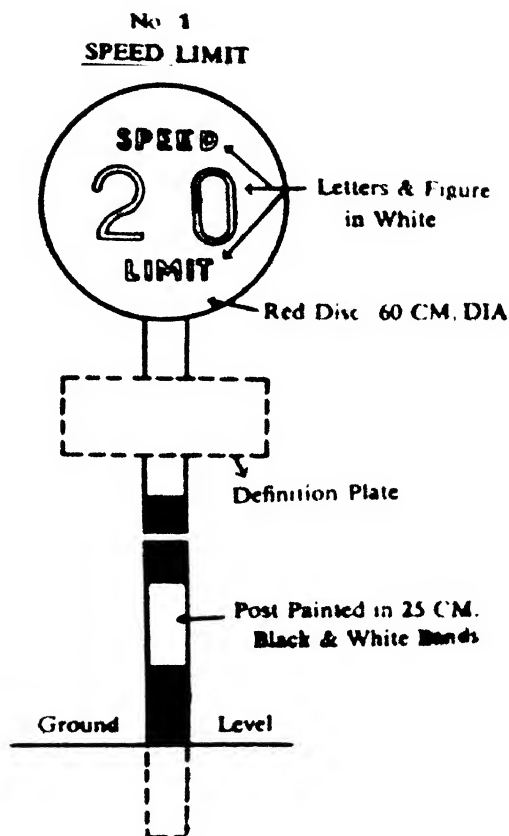
## THE NINTH SCHEDULE

[As amended by Act 51 of 1960, S. 9.]

[See sections 75, 77 and 78.]

## TRAFFIC SIGNS

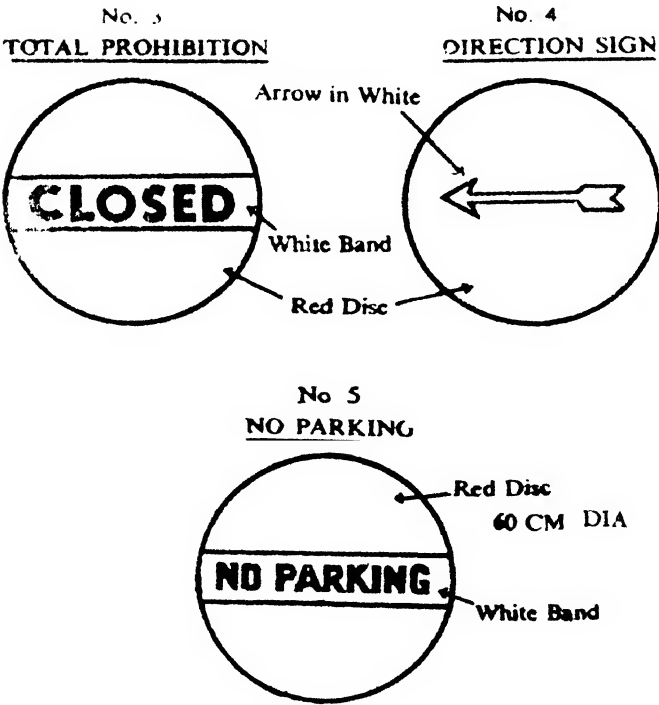
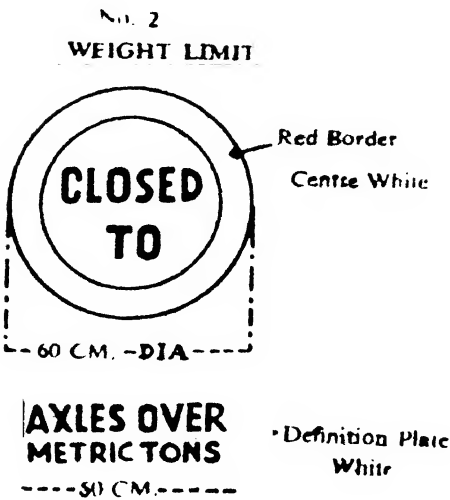
## Part A. — Mandatory Signs.



## NOTES. —

- (1) The figure 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.
- (2) The general design of the post is given for guidance.
- (3) Where the speed limit is, or is to be, imposed only on a certain class or classes of motor vehicle the class or classes will be specified on the "definition plate". Where in addition to a general speed limit applicable to other motor vehicles a special speed limit is, or is to be imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies will be specified on the "definition plate".

Part A. — Mandatory Signs (contd.)



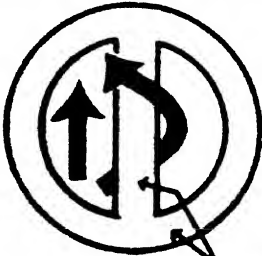
NOTE. — Sign No. 5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the general arrangement set forth in sign No. 1 of this Part. Upon the definition plate may be set forth the times during which parking is prohibited. In like manner an arrow-head inscribed on the definition plate will indicate that parking is prohibited on that part of the street or road lying to the side of the sign to which the arrow-head points.



Part A. — Mandatory Signs (contd.)

No. 6

OVER TAKING PROHIBITED




Red Border & Band

[a] [ (i) ]

USE OF SOUND SIGNALS

PROHIBITED

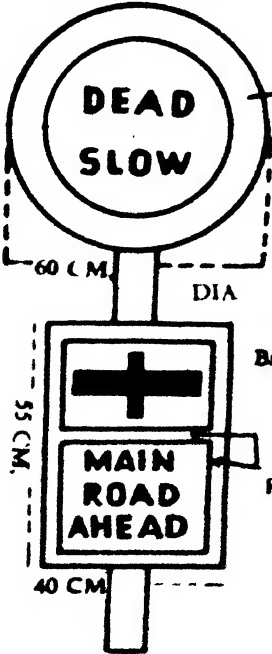


Cross & Border Red  
Background White  
Device Black.]

[a] Substituted for the original sign by the Motor Vehicles (Amendment) Act, 1939 (XI. of 1939), S. 7.

No. 8

MAIN ROAD AHEAD



Red Border  
Centre White

60 CM DIA

55 CM

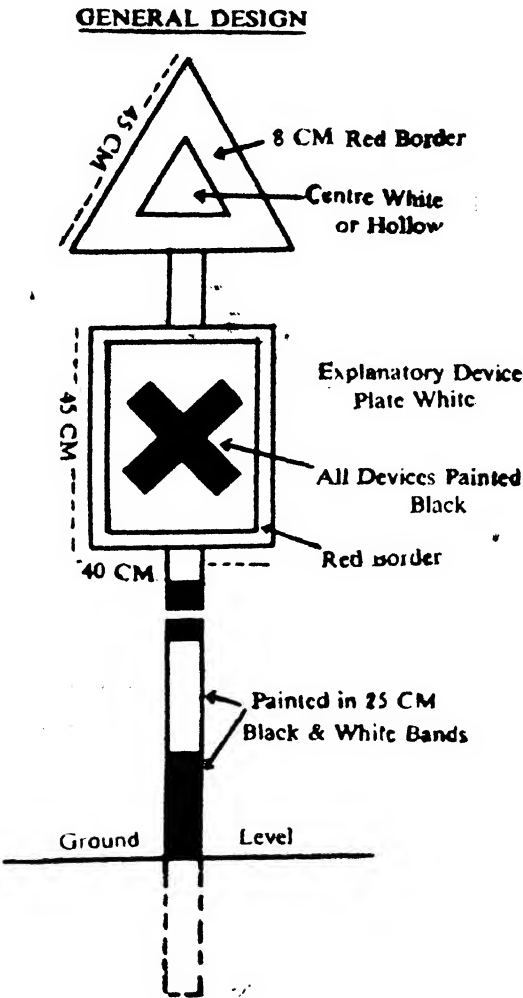
40 CM

Background White

Red Border &

Part B. — Cautionary Signs.

The signs of this Part shall be used in conjunction with a red triangular plate, the centre of which shall be either hollow or painted white, in the manner indicated in the general design reproduced below.



Part B. — Cautionary Signs (contd.)

No. 1  
ROUGH ROAD



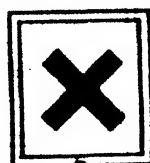
No. 2  
ZIG-ZAG (RIGHT)



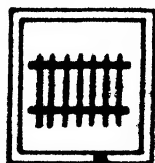
No. 2  
ZIG-ZAG (LEFT)



No. 3  
CROSS ROADS



No. 4  
LEVEL CROSSING  
(GUARDED)



No. 5  
LEVEL CROSSING  
(UNGUARDED)



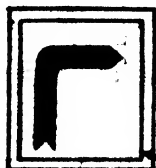
Red Border

Red Border

Red Border

Part B. — Cautionary Signs (*contd.*)

No. 6  
RIGHT TURN



No. 6  
LEFT TURN



Red Border

No. 7  
SCHOOL



No. 8  
DEAD END  
CROSS ROAD



Red Border

No. 9  
SIDE ROAD (RIGHT)



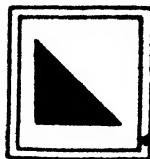
No. 9  
SIDE ROAD (LEFT)



Red Border

Part B. — Cautionary Signs (contd.)

No 10  
STEEP HILL



No 11  
FERRY



Red Border

No 12  
HAIR PIN BEND  
(RIGHT)



No 12  
HAIR PIN BEND  
(LEFT)



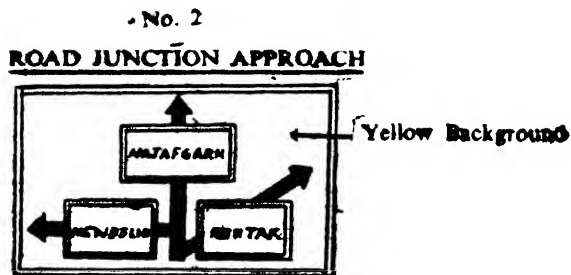
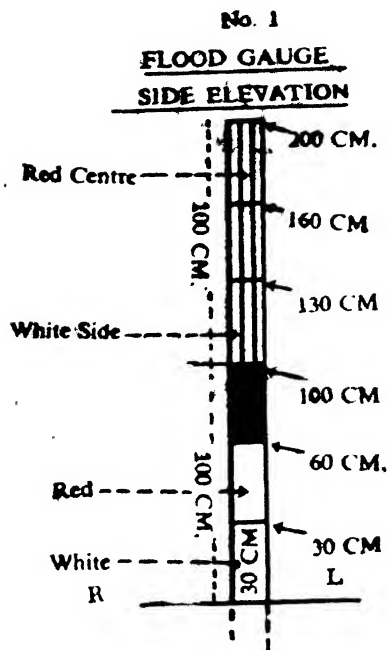
Red Border

No 13  
NARROW BRIDGE

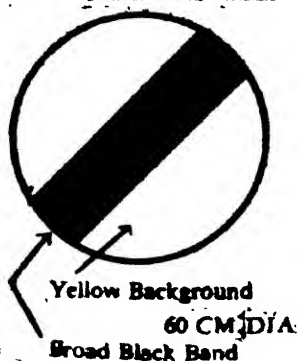


Red Border

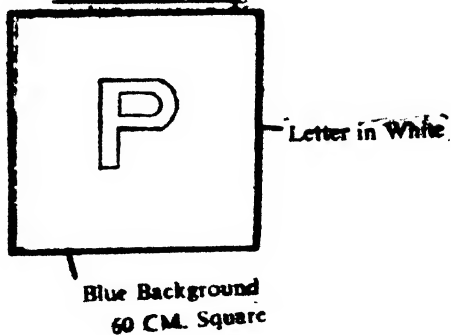
Part C. — Informatory Signs.



No. 3  
END OF SPEED LIMIT



No. 4  
PARKING SIGN



## THE TENTH SCHEDULE

(See sections 77 and 78.)

## DRIVING REGULATIONS

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.

2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.

3. The driver of a motor vehicle may pass to the left of a vehicle the driver of which having indicated an intention to turn to the right has drawn to the centre of the road and may pass a tram-car or other vehicle running on fixed rails, whether travelling in the same direction as himself or otherwise, on either side :

Provided that in no case shall he pass a tram-car at a time or in a manner likely to cause danger or inconvenience to other users of the road or pass on the left hand side a tram-car, which, when in motion would be travelling in the same direction as himself, while the tram-car is at rest for the purpose of setting down or taking up passengers.

4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself—

(a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or

(b) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.

5. The driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him.

6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

8. The driver of a motor vehicle shall, when passing or meeting a procession or a body of troops or police on the march or when passing workmen engaged on road repair, drive at a speed not greater than "[25 km.] an hour.

[a] Substituted for "fifteen miles" by the Motor Vehicles (Second Amendment) Act, 1980 (LI of 1980), S. 10 [w. e. f. 1-1-1981].

9. The driver of a motor vehicle shall—

(a) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering;

(b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner that—

(i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads; and

(ii) it arrives as near as may be at the left hand side of the road which the driver is entering.

## THE ELEVENTH SCHEDULE

(See section 79.)

## SIGNALS

1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizontal position outside of and to the right of his vehicle with the palm of the hand turned to the front

2. When about to turn to the left or to drive to the left hand side of the road, a driver shall extend his right arm and rotate it in an anticlockwise direction.

3. When about to slow down, a driver shall extend his right arm with the palm downward and to the right of the vehicle and shall move the arm so extended up and down several times in such a manner that the signal can be seen by the driver of any vehicle which may be behind him.

4. When about to stop, a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the front.

5. When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall swing the arm backwards and forwards in a semicircular motion.

## [THE] MULTI-UNIT CO-OPERATIVE SOCIETIES ACT, 1942

(ACT VI OF 1942)

[The Act printed here is as on 15-9-1960.]

## C O N T E N T S

## SECTIONS

1. Short title, extent and application.
2. Co-operative societies to which this Act applies registered before commencement of this Act.
3. Co-operative societies to which this Act applies registered after commencement of this Act.
4. Appointment and powers of Central Registrar of Co-operative Societies.
5. Penalty for failure to furnish

information required under this Act.

- 5A. Transitional provisions regarding certain co-operative societies affected by reorganisation of States.
- 5B. Power to delegate.
- 5C. Transitional provision relating to certain multi-unit co-operative societies.
6. Power of Central Government to make rules.

## STATEMENT OF OBJECTS AND REASONS

"Multi-unit co-operative societies, that is to say, co-operative societies operating over more than one province, are corporations within the meaning of entry 33 in List I of the Seventh Schedule of the Government of India Act, 1935, and the legislative and executive jurisdiction in respect of their incorporation, regulation and winding up is exclusively central. Any provisions of the Co-operative Societies Act, 1912, or of the Provincial Co-operative Societies Acts which might purport to vest executive jurisdiction in respect of such multi-unit societies in provinces can have no valid basis. It is, therefore, necessary to legislate for the incorporation, regulation and winding up of co-operative societies operating over more than one province.

The Bill applies to the multi-unit societies, the existing legislation applicable to the societies operating within a single province. It will

apply to all multi-unit societies irrespective of their nature of their work. Provision has been made to enable the Government to appoint a Central Registrar but as the number of multi-unit societies in existence at present is small, it is proposed to entrust the functions of the Central Registrar to the Provincial Registrars until the growth in the numbers of multi-unit societies makes the appointment of a Central Registrar necessary. Powers of inspection and audit of the branch offices of a multi-unit society will also be vested in the Registrars of the Provinces where such branch offices are situated, and they will also have power to call for such returns and information from the branches of multi-unit societies as they can call for from single-unit societies registered by them."

— Gazette of India, 1942, Part V, page 17.



## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts XXXIV of 1956; XXXVII of 1956; LVI of 1959; XI of 1960.
- Adapted by A. L. O., 1950.

## COGNATE ACTS AND PROVISIONS

## 1. CO-OPERATIVE SOCIETIES ACT, 1912.

[THE] MULTI-UNIT CO-OPERATIVE SOCIETIES ACT, 1942  
(ACT VI OF 1942)<sup>a</sup>

[2nd March, 1942.]

*An Act to provide for the incorporation, regulation and winding up of co-operative societies with objects not confined to one province.*

**WHEREAS** it is expedient to provide for the incorporation, regulation and winding up of co-operative societies with objects not confined to one province;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1942, Pt. V, p. 17.

**1. Short title, extent and application.**

(1) This Act may be called THE MULTI-UNIT CO-OPERATIVE SOCIETIES ACT, 1942.

<sup>a</sup>[(2) It extends to the whole of India except the State of Jammu and Kashmir.]

(3) It applies to all co-operative societies with objects not confined to one <sup>a</sup>[State] incorporated before the commencement of this Act under the Co-operative Societies Act, 1912, or under any Act relating to co-operative societies in force in any <sup>a</sup>[State], and to all co-operative societies with objects not confined to one State to be incorporated after the commencement of this Act.

[a] Substituted for the former sub-section, by the Multi-unit Co-operative Societies (Amendment) Act, 1956 (XXXIV of 1956), S. 2 (28-8-1956)

**2. Co-operative societies to which this Act applies registered before commencement of this Act.**

(1) A co-operative society to which this Act applies which has been registered in any <sup>a</sup>[State] under the law relating to co-operative societies in force in that <sup>a</sup>[State] shall be deemed in any other <sup>a</sup>[State] to which its objects extend to be duly registered in that other <sup>a</sup>[State] under the law there in force relating to co-operative societies, but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the <sup>a</sup>[State] in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or establishes after the commencement of this Act a branch or place of business in a <sup>a</sup>[State] other than that in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish to the Registrar of Co-operative Societies of the <sup>a</sup>[State] in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that <sup>a</sup>[State].

(3) The Registrar of Co-operative Societies of the <sup>a</sup>[State] in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and

of inspection which he might exercise in respect of a co-operative society actually registered in the <sup>^</sup>[State].

*Note.*—Co-operative Societies operating over more than one State are corporations within the meaning of Entry 44 of List I of Sch. VII, Constitution of India, and the legislative and executive jurisdiction in respect of their incorporation, regulation and winding up is exclusively central. Any provision of the Co-operative Societies Act, 1912 or of the Provincial Co-operative Societies Acts which might purport to vest executive jurisdiction in respect of such multi-unit societies in the States has no valid basis. This Act legislates for the incorporation, regulation and winding up of multi-unit co-operative societies, i. e., societies operating over more than one State.

### 3. Co-operative societies to which this Act applies registered after commencement of this Act.

(1) A society which might, if its objects were confined to one <sup>^</sup>[State], be registered as a co-operative society in any <sup>^</sup>[State] under the law relating to co-operative societies in force in that <sup>^</sup>[State], shall, notwithstanding that its objects are not confined to the State in which its principal place of business is to be situated, be deemed for the purposes of registration as a co-operative society to be situated wholly in that <sup>^</sup>[State], and may be registered by the Registrar of Co-operative Societies of that <sup>^</sup>[State] in accordance with the law relating to co-operative societies for the time being in force in that <sup>^</sup>[State], and if so registered shall be deemed in any other <sup>^</sup>[State] to which its objects extend to be duly registered in that other <sup>^</sup>[State] under the law there in force relating to co-operative societies but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the <sup>^</sup>[State] in which it is actually registered.

(2) Where any such co-operative society establishes a branch or place of business in a <sup>^</sup>[State] other than that in which it is actually registered, it shall within six months from the date of establishment of the branch or place of business furnish to the Registrar of Co-operative Societies of the <sup>^</sup>[State] in which such branch or place of business is situated a copy of its registered bye-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that <sup>^</sup>[State].

(3) The Registrar of Co-operative Societies of the <sup>^</sup>[State] in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in that <sup>^</sup>[State].

### 4. Appointment and powers of Central Registrar of Co-operative Societies.

(1) The Central Government may, if it thinks fit, appoint<sup>a</sup> a Central Registrar of Co-operative Societies.

(2) The Central Registrar of Co-operative Societies, if appointed, shall exercise in respect of any co-operative society to which this Act applies, to the exclusion of <sup>^</sup>[State] Registrars, the powers and functions exercisable by the Registrar of Co-operative Societies of the <sup>^</sup>[State] in which such society is actually registered.

[a] The Joint Secretary in charge of Co-operation in the Ministry of Agriculture, Govt. of India, appointed as the Central Registrar of Co-operative Societies, *see* S. R. O. 114 dated 29-12-1956, Gaz. of Ind., 1957, Pt. II-Sec. 3 p. 65.

### 5. Penalty for failure to furnish information required under this Act.

If any co-operative society fails to furnish the information which it is required to furnish by or under sub-section (2) of section 2 or sub-section (2) of section 3, or to submit any return required to be submitted under either of those sub-sections, the society, and any officer or member of the society respon-

sible for the failure, shall each be liable to fine which may extend to fifty rupees, and the registration of the society may, at the discretion of the Registrar of Co-operative Societies of the State in which the society is actually registered, be cancelled.

**\*[5A. Transitional provisions regarding certain co-operative societies affected by reorganisation of States.**

(1) Where by virtue of the provisions of Part II of the States Reorganisation Act, 1956, <sup>1</sup>[or any other enactment relating to reorganisation of States, any co-operative society which, immediately before the day on which the reorganisation takes place], had its objects confined to one State becomes, as from that day, a multi-unit co-operative society, it shall be deemed to be a co-operative society to which this Act applies and shall be deemed to be actually registered in the State in which the principal place of business of the co-operative society is situated.

(2) If it appears to the Central Registrar of Co-operative Societies necessary or expedient that any such society should be reconstituted or reorganised in any manner or that it should be dissolved, the Central Registrar may, with the approval of the Central Government, place before a meeting of the general body of the society held in such manner as may be prescribed by rules made under this Act, a scheme for the reconstitution, reorganisation or dissolution of the society, including proposals regarding the formation of new co-operative societies and the transfer thereto of the assets and liabilities of that society.

(3) If the scheme is sanctioned by a resolution passed by a majority of the members present at the said meeting, either without modifications or with modifications to which the Central Registrar agrees, he shall certify the scheme and upon such certification, the scheme shall, notwithstanding anything to the contrary contained in any law, regulation or bye-law for the time being in force, be binding on all the societies affected by the scheme, as well as the shareholders and creditors of all such societies.

(4) If the scheme is not sanctioned under sub-section (3), the Central Registrar may refer the scheme to such Judge of the appropriate High Court as may be nominated in this behalf by the Chief Justice thereof, and the decision of that Judge in regard to the scheme shall be final and shall be binding on all the societies affected by the scheme as well as the shareholders and creditors of all such societies.

*Explanation.*— In this sub-section "appropriate High Court" means the High Court within whose jurisdiction the principal place of business of the multi-unit co-operative society is situated.]

[a] Sections 5-A and 5-B were inserted by the States Reorganisation Act, 1956 (XXXVII of 1956), S. 105 [w. e. f. 1-11-1956]. [b] Substituted for "any co-operative society which, immediately before the 1st day of November, 1956," by the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (LVI of 1959), S. 39 [w. e. f. 1-4-1960].

**\*[5B. Power to delegate.**

The Central Government may, by notification in the Official Gazette, direct that any power or authority exercisable by the Central Registrar of Co-operative Societies under this Act shall, in relation to such matters and subject to such conditions as may be specified in the direction, be exercisable also by such Registrar of Co-operative Societies of a State or by such officer subordinate to the Central Government or to a State Government as may be specified in the notification.]

[a] See Foot-note (a) under S. 5A. [b] For such notification, see S. R. O. 115 dated 29-12-1956 published in Gaz. of Ind., 1957, Pt. II-Section 3, page 65.

**\*[5C. Transitional provision relating to certain multi-unit co-operative societies.**

(1) Where, in respect of any co-operative society specified in the Twelfth Schedule<sup>b</sup> which under the provisions of sub-section (1) of section 5A becomes

a multi-unit co-operative society, the Board of Directors unanimously adopts any scheme for the reconstitution, reorganisation or dissolution of the society, including proposals for the formation of new co-operative societies and the transfer thereto of the assets and liabilities and employees of that society and the State Government of Bombay certifies the scheme at any time before the 1st day of May, 1960, then notwithstanding anything contained in sub-section (2) or sub-section (3) or sub-section (4) of the said section or any other law, regulation or bye-law for the time being in force in relation to that society, the scheme so certified shall be binding on all societies affected by the scheme, as well as the shareholders, creditors and employees of all such societies, subject to such financial adjustments as may be directed in this behalf under sub-section (3), but no such scheme shall be given effect to before the said day.

(2) When a scheme in respect of a co-operative society is so certified, the Central Registrar shall place the scheme at a meeting, held in such manner as may be prescribed by rules made under this Act, of all the persons who, immediately before the date of certification of the scheme, were members of the society and the scheme may be approved by a resolution passed by a majority of the members present and voting at the said meeting.

(3) If the scheme is not so approved or is approved with modifications, the Central Registrar may refer the scheme to such Judge of the High Court at Bombay as may be nominated in this behalf by the Chief Justice thereof and the Judge may direct such financial adjustments to be made among the societies affected as he deems necessary, and the scheme shall be deemed to be approved subject to those financial adjustments.

(4) If in consequence of the directions given under sub-section (3), a society becomes liable to pay any sum of money, the State within whose area the society is located shall be liable as guarantor in respect of the payment of such money.]

[a] *Inserted* by the Bombay Re-organisation Act, 1960 (XI of 1960), S. 73 [w. e. f. 1-5-1960]. [b] That is, the Twelfth Schedule of the Bombay Re-organisation Act, 1960. The Co-operative Societies specified in the said schedule are : (1) the Bombay State Co-operative Bank Ltd.; (2) the Bombay State Co-operative and Mortgage Bank Ltd.; (3) the Bombay State Co-operative Housing Finance Society; (4) the Bombay State Industrial Co-operative Association; (5) the Bombay State Co-operative Union; and (6) Mumbai Rajya Sahakari Karkhana Sangh.

## **6. Power of Central Government to make rules.**

The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup> for carrying into effect the provisions of this Act.

[a] *See* the Multi-Unit Co-operative Societies Rules, 1957, Gaz. of Ind., 1957, Pt. II-S. 3, page 1122.

## **[THE] MUNICIPAL TAXATION ACT, 1881**

(ACT XI of 1881)

[The Act printed here is as on 15-9-1960.]

### **C O N T E N T S**

#### **PREAMBLE**

#### **SECTIONS**

1. Short title.

Local extent.

2. "Municipal Committee" defined.

3. Power to prohibit levy of tax.

3A. Power of State Government to prohibit levy of taxes on it.

4. Central Government to pay taxes referred to in section 3.

5. Payments to be made in lieu of taxes referred to in section 3A.

6. Decision of question arising under this Act.

## STATEMENT OF OBJECTS AND REASONS

"By the twenty-fourth section of the Cantonments Act, 1880, the Governor-General in Council is empowered to prohibit the levy of any tax in a cantonment, or to exempt any person or class of persons from the operation of any tax leviable there.

This power was conferred chiefly with a view to the exemption of military men in cantonments situate within the limits of municipalities from certain descriptions of municipal taxation. There are, however, cases in which, owing to the want of accommodation in cantonments or to some other cause, military men are compelled to reside within the limits of a municipality, but out of cantonments. In such cases the power in question is

inapplicable, and it was accordingly proposed by the Select Committee on the Cantonment Bill that the defect should be supplied by a provision to be inserted in the Bill for the control of Municipal taxation, for the introduction of which leave had then been granted.

As, however, that Bill is not at present to be proceeded with, it has been thought desirable to make the necessary provisions in a separate Bill; and the present Bill has accordingly been prepared for this purpose.

The bill also provides for the exemption of Government property from municipal taxation, recent experience having shown such a power to be necessary."

—Gaz. of Ind., 1880, Part V, page 193.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts X of 1927; XIV of 1932; XXXV of 1934.

—Adapted by A. O. 1937; A. C. A. O. 1948; A. L. O. 1950; 2 A. L. O. 1956.

—Extended by Acts LIX of 1949; XXX of 1950.

Extended in Bombay by Bom. Act IV of 1950.

Extended in Madhya Pradesh by M. P. Act XII of 1950.

—Extended in Punjab by Punj. Act V of 1950.

—Repealed in part by Act X of 1914.

## [THE] MUNICIPAL TAXATION ACT, 1881

(ACT XI OF 1881)\*

[25th February, 1881.]

*An Act to give power to prohibit the levy of municipal taxes in certain cases.*

## Preamble.

WHEREAS it is expedient to empower <sup>b</sup>[Government] to prohibit, in certain cases the levy of municipal taxes payable by persons in the military, <sup>c</sup>[naval] <sup>d</sup>[or air-force] service or by the <sup>a</sup>[State Government]; It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1880, Pt. V, p. 193.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to States merged in the State of—

Bombay by Bom. Act IV of 1950;

Madhya Pradesh by M. P. Act XII of 1950;

Punjab by Punj. Act V of 1950.

[b] Substituted for "the Governor-General in Council" by A. C. A. O., 1948. [c] Inserted by the Amending Act, 1934 (XXXV of 1934), S. 2 and Sch. [d] Inserted by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. 1.

## 1. Short title.

This Act may be called THE MUNICIPAL TAXATION ACT, 1881.

## Local extent.

It extends to the whole of India except <sup>a</sup>[the territories, which immediately before the 1st November, 1956, were comprised in Part B States]; <sup>b</sup>[ \* \* \* ].

[a] Substituted for "Part B States", by 2 A. L. O., 1956. Immediately before the 1st Nov. 1956, the following were the Part B States in India : Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. [b] The words "and shall come into force at once" were omitted by the Repealing and Amending Act, 1914 (X of 1914).

## 2. "Municipal Committee" defined.

In this Act "Municipal Committee"\* includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

[a] For the purposes of this Act, every Cantonment Board as defined in the Cantonments Act, 1924 (II of 1924), is deemed to be a Municipal Committee : see S. 97 of that Act.

### 3. Power to prohibit levy of tax.

Notwithstanding anything contained in any enactment for the time being in force, the <sup>a</sup>[Central Government] may, by an order in writing, prohibit<sup>aa</sup> the levy by a Municipal Committee of any specified tax—

- (a) payable by any person subject to the <sup>a</sup>[Army Act, the Indian Army Act,<sup>b</sup> 1911.] <sup>c</sup>[the Naval Discipline Act <sup>d</sup>[\* \* \*] the Indian Navy (Discipline) Act, 1934.] <sup>e</sup>[the Air Force Act or the Indian Air Force Act,<sup>f</sup> 1932] who is compelled by the exigencies of military <sup>g</sup>[naval] <sup>h</sup>[or air-force] duty to reside within the limits of a municipality ;
- h [\* \* \* \* \*].

The <sup>a</sup>[Central Government] may, by a like order, rescind any such prohibition.

[aa] For instances of such Orders relating to the Military, see General Statutory Rules and Orders, Vol. II, p. 278; for exemption of bicycles and tricycles used by non-Commissioned Officers and Soldiers, see *ibid.* [a] *Substituted* for "Army Discipline and Regulation Act, 1879, or the Indian Articles of War", by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I. [b] See now the Army Act, 1950 (XLVI of 1950). [c] *Inserted* by the Amending Act, 1934 (XXXV of 1934), S. 2 and Sch. [d] The words "or that Act as modified by" were *omitted* by A. L. O. 1950. [e] *Substituted* for "or the Air Force Act" by the Air Force Act, 1932 (XIV of 1932), S. 130 and Schedule. [f] See now the Air Force Act, 1950 (XLV of 1950). [g] *Inserted* by Act X of 1927, S. 2 and Sch. I. [h] The words "or (b) payable by the Secretary of State for India in Council" were *omitted* by A. O. 1937.

*Note* : There are cases where due to want of accommodation in cantonments, military personnel are compelled to reside in municipal areas but out of cantonments. In such cases, powers given to the Central Government by the Cantonments Act, to exempt such persons from being subject to municipal taxes, are not enough. This section gives the Central Government this power.

### <sup>a</sup>[3A. Power of State Government to prohibit levy of taxes on it.

Notwithstanding anything in any enactment for the time being in force, the <sup>a</sup>[State] Government may by an order in writing prohibit the levy by a Municipal Committee of any specified tax payable by the <sup>a</sup>[State] Government and may by a like order rescind any such prohibition.]

[a] *Inserted* by A. O. 1937.

### 4. Central Government to pay taxes referred to in section 3.

So long as any order made under section 3, prohibiting the levy of a tax on any person mentioned in <sup>a</sup>[\* \* \* \*] that section remains in force, the <sup>b</sup>[Central Government] shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the <sup>c</sup>[Central Government] shall not be liable to pay any sum in respect of any horse which such person is bound, by the regulations of the service to which he belongs, to keep.

[a] The words "clause (a) of" were *omitted* by A.O. 1937. [b] *Substituted* for "Secretary of State for India in Council", *ibid.* [c] *Substituted* for "said Secretary of State in Council", *ibid.*

### 5. Payments to be made in lieu of taxes referred to in section 3A.

So long as any order made under <sup>a</sup>[section 3A] prohibiting the levy of any tax payable by the <sup>a</sup>[State Government], remains in force, the said <sup>a</sup>[State Government] shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the [State Government] may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

[a] *Substituted* for "section 3", by A.O. 1937.]

### 6. Decision of question arising under this Act.

If any question arises whether any duty is military, <sup>a</sup>[naval] <sup>b</sup>[or air-force] duty within the meaning of this Act, the decision of the <sup>a</sup>[Central Government] thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse, the decision thereon of such authority as the <sup>a</sup>[Central Government] may, from time to time, appoint in this behalf shall be conclusive.

[a] *Inserted* by the Amending Act, 1954 (XXXV of 1954), S. 2 and Sch. [b] *Inserted* by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I.

## [THE INDIAN] MUSEUM ACT, 1910 (ACT X of 1910)

[The Act printed here is as on 1-12-1960]

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9. Power of Trustees to appoint officers and servants.	16. Property in collections on determination of trust.
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### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts XVII of 1922; XLV of 1900.
- Adapted by A. O., 1937; A. C. A. O., 1948; A. L. O., 1950.
- Repealed in part by Act X of 1914.

## [THE INDIAN] MUSEUM ACT, 1910 (ACT X OF 1910)<sup>a</sup>

[18th March, 1910.]

*An Act to consolidate and amend the law relating to the Indian Museum.*

**WHEREAS** it is expedient to consolidate and amend the law relating to the Indian Museum; It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1909, Pt. V, p. 109; for Report of Select Committee, *see* *ibid.*, 1910, Pt. V, p. 65.

This Act applies only to the Indian Museum, which is situated in Calcutta.

### PRELIMINARY

#### 1. Short title and commencement.

(1) This Act may be called **THE INDIAN MUSEUM ACT, 1910.**

(2) It shall come into force on such <sup>a</sup>date as the <sup>a</sup>[Central Government], by notification in the <sup>a</sup>[Official Gazette], may direct.

[a] The Act came into force on 1-6-1910, *see* Gaz. of Ind., 1910, Pt. I, p. 411.

### INCORPORATION OF THE TRUSTEES

#### 2. Constitution and incorporation of the Trustees of the Indian Museum.

<sup>a</sup>[(1) The Trustees of the Indian Museum (hereinafter referred to as the Trustees) shall be—

- (a) the Governor of West Bengal, *ex officio* Chairman;
- (b) the Secretary to the Government of India in the Ministry concerned with matters relating to the Indian Museum, *ex officio*;
- (c) the Mayor of the Corporation of Calcutta, *ex officio*;
- (d) the Vice-Chancellor of the University of Calcutta, *ex officio*;
- (e) the Accountant-General, West Bengal, *ex officio*;
- (f) four persons to be nominated by the Central Government, one of whom shall be a representative of commerce and industry chosen in consultation with the Government of West Bengal;
- (g) one person to be nominated by the Government of West Bengal;
- (h) one person to be nominated by the Council of the Asiatic Society, Calcutta :

Provided that if any of the Trustees referred to in clauses (b), (c), (d) and (e) is unable to attend any meeting of the Trustees, he may, with the previous approval of the Chairman, authorise a person in writing to do so.]

(2) The Trustees shall be a body corporate, by the name of "The Trustees of the Indian Museum", with perpetual succession and a common seal, and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts, and to do all acts necessary for and consistent with the purposes of this Act.

(3) The nominated Trustees shall, save as herein otherwise provided, hold office for a period of three years :

Provided that the authority nominating a Trustee may extend his term of office for one or more like periods.

[a] *Substituted* for the original sub-section (1) by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 2 [30-11-1960].

#### 3. Minimum number of Trustees and quorum.

(1) The powers of the said body corporate may only be exercised so long and so often as there are <sup>a</sup>[six] members thereof.

(2) The quorum necessary for the transaction of business at a meeting of the Trustees shall not be less than <sup>b</sup>[four].

[a] *Substituted* for 'nine' by the Indian Museum (Amendment) Act, 1960 (XLV of 1960) S. 3 [30-11-1960]. [b] *Substituted* for 'six', *ibid*.

#### 4. Power to appoint new Trustees.

If a nominated Trustee—

- (a) dies, or
- (b) is absent from the meetings of the Trustees for more than twelve consecutive months, or
- (c) desires to be discharged, or
- (d) refuses or becomes incapable to act, or
- (e) is appointed to perform the duties of <sup>a</sup>[any of the offices specified in clauses (a) to (e) of sub-section (1) of section 2],



the authority which nominated the Trustee may nominate a new Trustee in his place.

[a] *Substituted* for the words, figure, brackets and letter "any office specified in section 2, clause (a)" by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 4 [30-11-1960].

**5.** Vacation of office by existing Trustees. [*Repealed by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), section 5 [30.11.1960].*]

### PROPERTY AND POWERS OF THE TRUSTEES

**6.** Property vested in or placed under the control of the Trustees.

(1) All the property, whether movable or immovable, which at the commencement of this Act is held by the Trustees of the Indian Museum constituted by the Indian Museum Act, 1876, on trust for the purposes of the said Museum shall, together with any such property which may hereinafter be given, bequeathed, transferred or acquired for the said purposes, vest in the Trustees of the Indian Museum constituted by this Act on trust for the purposes of the said Museum :

Provided that the Trustees may expend the capital of any portion of such property which may consist of money on the maintenance, improvement and enlargement of the collections deposited in, presented to or purchased for, the said Museum or otherwise for the purposes of the same as they may think fit.

(2) The Trustees shall have the exclusive possession, occupation and control, for the purposes of such trust, of the land specified in the schedule, including any buildings which may have been, or may hereafter be, erected thereon, other than those portions thereof which have been set apart by the Trustees for the records and offices of the Geological Survey of India.

[a] *Repealed* by this Act, S. 17.

**7.** Power to Trustees to exchange, sell and destroy articles in collections.

Subject to the provisions of any bye-laws made in this behalf, the Trustees may, from time to time,—

- (a) deliver, by way of loan, to any person the whole or any portion of, or any article contained in, any collection vested in them under this Act;
- (b) exchange or sell duplicates of articles contained in any such collection and take or purchase, in the place of such duplicates, such articles as may in their opinion be worthy of preservation in the Museum ;
- (c) present duplicates of articles contained in any such collection to other Museums in "[India] ; and
- (d) remove and destroy any article contained in any such collection.

[a] *Substituted* for "the Provinces", by A.L.O., 1950.

**8.** Power to Trustees to make bye-laws.

(1) The Trustees may from time to time, with the previous sanction of the <sup>a</sup>[Central Government], make bye-laws consistent with this Act <sup>a</sup>[and the rules made thereunder] for any purpose necessary for the execution of their trust.

(2) In particular, and without prejudice to the generality of the foregoing power, such <sup>b</sup>[bye-laws] may provide for—

- (a) the summoning, holding and adjournment of general and special meetings of the Trustees ;
- (b) the securing of the attendance of Trustees at such meetings ;
- (c) the provision and keeping of minute-books and account-books ;
- (d) the compiling of catalogues ;
- (e) the lending of articles contained in the collections vested in the Trustees ;
- (f) the exchange and sale, and the presentation to other Museums in "[India], of duplicates of articles contained in such collections ;

- (g) the removal and destruction of articles contained in such collections ; and
- (h) the general management of the Museum.

[a] *Inserted* by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 6 [30-11-1960]. [b] *Substituted* for 'rules', *ibid.* [c] *Substituted* for "the Provinces" by A.L.O., 1950 [26-1-1950].

#### \*[9. Power of Trustees to appoint officers and servants.

(1) Subject to the provisions of sub-section (2), the trustees may appoint such officers and servants as they may consider necessary or proper for the care or management of the trust-property, and determine their functions.

(2) The recruitment and the conditions of service of such officers and servants shall be regulated by rules made under this Act.]

[a] *Substituted* for the original section 9 by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 7 [30-11-1960].

### DUTIES OF THE TRUSTEES

#### \*[10. Budget.

The Trustees shall, by such date in each financial year as may be specified by the Central Government, submit to that Government for approval, in the form specified by that Government in consultation with the Comptroller and Auditor-General of India, the budget of the next financial year, showing the estimated receipts and expenditure during the next financial year.]

[a] Sections 10 and 10A are *substituted* for the original S. 10 by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 8 [30-11-1960].

#### \*[10A. Annual report and accounts.

(1) The Trustees shall, as soon as possible after the commencement of each financial year, submit —

(a) to the Central Government within such time or date as may be specified by the Central Government, a report giving a true and full account of their activities during the previous financial year and an account of the activities likely to be undertaken during the current financial year ;

(b) to such auditor as the Central Government may appoint in this behalf, accounts of all moneys expended by the Trustees during the previous financial year, supported by the necessary vouchers.

(2) The Trustees shall cause such report and accounts to be published annually for general information.]

[a] *See* foot-note [a] under section 10.

#### 11. Collections of Asiatic Society to be kept distinguished in the Museum.

(1) The Trustees shall cause every article in the collections in the said Indian Museum formerly belonging to the Asiatic Society of Bengal \*[(now known as the Asiatic Society, Calcutta)] and all additions that may hereafter be made thereto otherwise than by purchase under section 6, to be marked and numbered and (subject to the provisions contained in sections 7 and 16) to be kept and preserved in the said Museum with such marks and numbers.

(2) An inventory of such additions shall be made by the said Society, one copy whereof shall be signed by the Trustees and delivered to the said Society, and another copy shall be signed by the Council of the said Society and delivered to the Trustees, and shall be kept by them along with the inventory delivered to the predecessors in office of the Trustees when the said collections were deposited in the said Museum.

[a] *Inserted* by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 9 [30-11-1960].

#### 12. Articles received in exchange or purchased and moneys realised from sale to be held on trust.

All objects taken in exchange and articles purchased under section 7 and all moneys realised from sales made in accordance with the terms of the same

section shall be held on trust and subject to powers and declarations corresponding as nearly as may be with the trusts, powers and declarations by this Act limited and declared.

### SUPPLEMENTAL PROVISIONS

#### \*[12A. Power of Central Government to issue directions to Trustees.

(1) In the discharge of their functions under this Act, the Trustees shall be bound by such directions on questions of policy as the Central Government may give to them from time to time :

Provided that the Trustees shall be given an opportunity to express their views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.]

[a] *Inserted* by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 10 [30-11-1960].

#### 13. Officers under Act to be public servants.

All officers and servants appointed under this Act shall be deemed to be public servants within the meaning of the Indian Penal Code ; \* [ \* \* \* ].

[a] The clause "and so far as regards their salaries, allowances, and pensions and their leave of absence from duty, they shall be subject to the rules which would be applicable if their service was service under the Central Government" was *omitted* by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 11 [30-11-1960].

#### 14. Power to Trustees to keep collections not belonging to them.

Notwithstanding anything hereinbefore contained, the Trustees may, if they think fit, with the previous sanction of the <sup>A</sup>[Central Government] and subject in each case to such conditions as it may approve and to such rules as it may prescribe, assume the custody and administration of collections which are not the property of the Trustees for the purposes of their trust under this Act, and keep and preserve such collections either in the Indian Museum or elsewhere :

Provided that if the trust constituted by this Act is at any time determined, any such collections shall not by reason of their then being in the Indian Museum become the property of Government.

#### \*[15. Power to Trustees to part with certain property in their possession.

Subject to such conditions as the Central Government may approve, the Trustees may deliver possession of the whole or any part of the property described in the schedule to such person as that Government may appoint.]

[a] *Substituted* for the original section, by A. O., 1937.

#### \*[15A. Power to make rules.

(1) The Central Government may, in consultation with the Trustees, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,—

(a) the recruitment and the conditions of service of the officers and servants of the Museum;

#### Section 13 — Note 1

[1] Section 13 has no reference to tenure of service. Section 13 is quite definite as to the matters with which it purports to deal, and all that it provides is that so far as regards their 'salary' 'allowances' and 'pension' and their leave of absence from duty, they (i. e. officers and servants appointed under the Act) shall be subject to the rules which under the Civil Service Regulations for the time

being in force would be applicable, if their service was service under the Government. That section has no reference at all to the question of the tenure of office. 1930 Cal 404 (408) [AIR V 17] : 57 Cal 231. (No regulations or conditions prescribed under S. 9—Tenure of employment can be terminated by reasonable notice.)

- (b) the form and manner in which the accounts of the Museum may be maintained and the manner in which such accounts may be audited;
- (c) the circumstances in which and the conditions subject to which the Trustees may assume the custody and administration of any collections referred to in section 14 and keep and preserve such collections;
- (d) the conditions subject to which the Trustees may deliver possession of any property in their possession to any other person.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[a] *Inserted* by the Indian Museum (Amendment) Act, 1960 (XLV of 1960), S. 12 [30-11-1960].

#### 16. Property in collections on determination of trust.

If the trust constituted by this Act is at any time determined,—

- (a) the collections and additions mentioned in section 11 shall become the property of the said Asiatic Society or their assigns, and
- (b) all the other collections then in the said Indian Museum shall, save as otherwise provided by section 14, become the property of <sup>A</sup>[Government].

#### 17. Repeals. [*Repealed by the Repealing and Amending Act, 1914 (X of 1914), S. 3 and Sch. II.*]

### THE SCHEDULE

(See sections 6 and 15.)

Land bounded—

on the north side by the premises No. 2, Sudder Street, and by Sudder Street;  
 on the west side by Chowringhee Road and by the premises No. 29, Chowringhee Road (occupied by the Bengal United Service Club);  
 on the south side by the premises No. 29, Chowringhee Road, by Kyd Street, and by the premises No. 4, Chowringhee Lane, and  
 on the east side by the premises No. 15, Kyd Street, and the premises Nos. 4, 3, 2 and 1, Chowringhee Lane,  
 together with all buildings, roads and tanks existing or erected thereon, and all easements appertaining thereto.

### [THE] MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937

(ACT XXVI of 1937)

[The Act printed here is as on 15-9-1960.]

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| 2. Application of Personal Law to Muslims. | 4. Rule-making power.           |
|  | 5. [ <i>Repealed.</i> ]         |
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## STATEMENT OF OBJECTS AND REASONS

"For several years past it has been the cherished desire of the Muslims of British India that Customary Law should in no case take the place of Muslim Personal Law. The matter has been repeatedly agitated in the press as well as on the platform. The Jamiat-ul-Ulema-i-Hind, the greatest Moslem religious body has supported the demand and invited the attention of all concerned to the urgent necessity of introducing a measure to this effect. Customary Law is a misnomer inasmuch as it has not any sound basis to stand upon and is very much liable to frequent changes and cannot be expected to attain at any time in the future that certainty and definiteness which must be the characteristic of all laws. The status of Muslim women under the so-called Customary Law is simply disgraceful. All the Muslim Women Orga-

nisations have therefore condemned the Customary Law as it adversely affects their rights. They demand that the Muslim Personal Law (Shariat) should be made applicable to them. The introduction of Muslim Personal Law will automatically raise them to the position to which they are naturally entitled. In addition to this the present measure, if enacted, would have very salutary effect on society because it would ensure certainty and definiteness in the mutual rights and obligations of the public. Muslim Personal Law (Shariat) exists in the form of a veritable code and is too well known to admit of any doubt or to entail any great labour in the shape of research, which is the chief feature of Customary Law."

—Gazette of India, 1935, Part V, page 136.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XVI of 1943; XLVIII of 1959.

—Amended in Madras by Mad. Act XVIII of 1949.

—Adapted by A.C.A.O., 1948; A.L.O., 1950; S.A.L.O., 1956.

—Extended by Acts LIX of 1949, XXX of 1950; LXVII of 1950.

—Extended in Bombay by Bom. Act IV of 1950.

—Adopted in Madhya Bharat by M.B. Act I of 1953.

—Repealed in part by Act VIII of 1939.

[THE] MUSLIM PERSONAL LAW (SHARIAT)  
APPLICATION ACT, 1937  
(ACT XXVI OF 1937)\*

[7th October, 1937.]

*An Act to make provision for the application of the Muslim Personal Law (Shariat) to Muslims* [\* \* \*].

WHEREAS it is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims [\* \* \*]; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1935, Pt. V, p. 136; for Report of the Select Committee, see *ibid.*, 1937, Pt. V, p. 235.

This Act has been extended to the new Provinces and merged States, by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh, by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States merged in the State of Bombay, by Bom. Act IV of 1950, S. 3 [30-3-1950].

It has been adopted *mutatis mutandis* in the State of Madhya Bharat by the M. B. Adoption of Laws Act, 1953 (I of 1953), S. 2 and Sch. [24-1-1953].

As to the application of this Act to Cooh-Behar State, see section 3 (2) of the Cooh-Behar (Assimilation of Laws) Act, 1950 (LXVII of 1950).

[b] The words "in the Provinces of India" were omitted by A. L. O., 1950.

## 1. Short title and extent.

(1) This Act may be called THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937.

(2) It extends to the whole of India \*{except the State of Jammu and Kashmir} [\* \* \*].

[a] Substituted for "except the territories which, immediately before the 1st November, 1956, were comprised in Part B States", by the Miscellaneous Personal Laws (Extension) Act, 1959 (XLVIII of 1959), S. 3 and Sch. I [date of commencement not published up to 15-11-1960]. [b] The words "excluding the North-West Frontier Province" were omitted by A. C. A. O., 1948.

## 2. Application of Personal Law to Muslims.

Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula* and *mubaraat*, maintenance, dower, guardianship, gifts, trusts and trust properties, and *wakfs* (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*).

### STATE AMENDMENTS

#### ANDHRA PRADESH

Same as that of Madras.

#### MADRAS

For section 2 substitute the following section, namely:—

“2. *Application of Personal Law to Muslims.*—Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage, including *Talaq, Ila, Zihar, Lian, Khula* and *Mubaraat*, maintenance, dower, guardianship, gifts, trusts and trust properties and *wakfs* the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*).”

—Mad. Act XVIII of 1949, S. 2 [12-7-1949].

### Section 2 — Note 1

[1] A claim to an estate on the ground that it is attached to the claimant's office by custom cannot be urged after the enactment of the *Shariat law*. 1947 P C 97 (98) [AIR V 34 C 27] : ILR (1947) Kar (PC) 200.

[2] It is only if there is a case of intestate succession that the provisions of the *Shariat Act* apply. If in a particular case on account of a special custom there was no question of an intestate succession, then the *Shariat Act* would not apply. 1958 Mad 144 (146) [AIR V 45 C 42]. (Where it is established that the parties in spite of their being Muslims followed Hindu law under custom and that the property of the deceased must belong to the other members of the joint family by survivorship there is no scope for the application of this Act.) \*1959 Ker 67 (69) [AIR V 46 C 28] : ILR (1958) Ker 1266 (FB). (Act does not abolish rights and incidents of a Mappilla Marumakkathayam tarwad.) \*('58) 1958 Ker L Tim 627 (628) (DB). (Suit for partition of Mappilla tarwad property—Marumakkathayam law and not the *Shariat Act* will apply.) \* 1956 Mad 244 (246, 247) [AIR V 43 C 77] : ILR (1956) Mad 903 (DB). (The *Shariat Act* including the Madras amendment did not abolish the rights and incidents of a Moplah Marumakkathayam tarwad. The section expressly mentions “intestate succession” and it cannot apply unless a Muslim leaves property which would devolve on his heirs in the absence of a testamentary disposition. In a Mappilla tarwad no member has till partition a share in the property of the tarwad which devolves on his death as on intestate succession—AIR 1953 Mad 425, *Overruled*.)

[3] Where disputed alienation has been made in year 1931 and alienor has inherited this property under customary law his powers of alienation must be judged under law under which he took the estate, and not under different law. Provisions of *Shariat Act* do not deal with transfers and have no relevance. But

when succession opens out regarding this property after death of alienor person who takes his estate under provisions of *Shariat Act* would certainly inherit absolute estate, and power to contest alienations regarding house property would automatically disappear. 1944 Lah 121 (125) [AIR V 31] (DB).

[4] Before the passing of this Act the reversioner had a right to sue for declaration that an alienation by the widow of the deceased in possession of the estate for her life-time under the customary law was not binding on him and that right which has already accrued to him can in no way be affected by the passing of this Act. The Act has no retrospective operation either expressly or by necessary implication. 1943 Lah 219 (220) [AIR V 30] (DB).

[5] The Act applies only where the parties are Muslims and in so far as it relates to marriages it affects marriages contracted in accordance with Mahomedan law. It contains no provision which would have the effect of making the personal law of Muslims applicable to marriages between Muslims and non-Muslims. 1941 Cal 582 (590) [AIR V 28].

[6] Section applies to testamentary trusts and wakfs—Khoja creating trust or wakf by will—Validity of trust or wakf is determined by Mahomedan law. 1947 Bom 122 (126) [AIR V 34 C 38] : ILR (1947) Bom 1.

[7] Section 2, has not restored in its complete form Mussalman Law of wakf. Effect of S. 2, is to make Mussalman Law expressly applicable to subjects which under terms of previous Acts and Regulations had to be decided on principles of equity and good conscience. 1940 Cal 501 (505) [AIR V 27] : ILR (1940) 2 Cal 464 (DB).

[8] In an appeal pending on the date when this Act came into force the Court is not only entitled to but is also bound to apply its provisions where it has not to disturb or reopen a settled transaction by such application. 1953 Mad 445 (447) [AIR V 40 C 169]. (Suit by female heirs of deceased for a declaration of

### 3. Power to make a declaration.

(1) Any person who satisfies the prescribed authority—

(a) that he is a Muslim, and

(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872, and

(c) that he is a resident of <sup>a</sup>[the territories to which this Act extends],

may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of <sup>b</sup>[the provisions of this section], and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

(2) Where the prescribed authority refuses to accept a declaration under sub-section (1), the person desiring to make the same may appeal to such officer as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

[a] Substituted for "a Part A State or a Part C State", by S. A. L. O., 1956. [b] Substituted for "this Act", by the Muslim Personal Law (Shariat) Application (Amendment) Act, 1943 (XVI of 1943), S. 2 [7.4.1943].

### 4. Rule-making power.

(1) The <sup>a</sup>[State Government] may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made;

(b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the <sup>a</sup>[Official Gazette] and shall thereupon have effect as if enacted in this Act.

### 5. Dissolution of marriage by Court in certain circumstances. [*Repealed by the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), S. 6. [17.3.1939].*]

#### Section 2 — Note 1 (contd.)

their right to participate in the management of Durga and to rightful share of surplus income — Custom excluding them from such right on date of suit—Act passed pending appeal giving them such right—No vested rights affected by application of Act—*Held*, the appellate Court must apply Act and recognise the right of the plaintiffs.)

[9] In spite of the passing of the Muslim Personal Law (Shariat) Application Act, 1937, S. 488, Cr. P. C., applies to muslims also. (57) 1957 All L Jour 300 (302).

#### Section 3 — Note 1

[1] The Shariat Act did not purport to make the Muslim Personal Law applicable to all matters relating to Muslims. Nor did it in terms totally abrogate custom and usage in respect of matters other than those enumerated in Ss. 2 and 3 of the Act. 1956 Mad 244 (246) [AIR V 43 C 77] : ILR (1956) Mad 905 (DB).

#### Section 5 — Note 1

[1] The repealed S. 5 ran as follows: "The District Judge may, on petition made by a Muslim married woman, dissolve a marriage on any ground recognised by Muslim Personal Law (Shariat)."

[2] There being no provision in the repealing Act (Dissolution of Muslim Marriages Act (8 of 1939) affecting proceedings which had been initiated under S. 5 of the Muslim Personal Law (Shariat) Act when it was in force and were pending at the time of its repeal the matter is governed by Cl. (e) of S. 8, General Clauses Act. Hence where the petition under S. 5 was pending before the District Judge on the date when the Act of 1939 came into force the petition does not automatically lapse and the District Judge is bound to decide it in accordance with the provisions of the Shariat Act. 1941 Lah 175 (176, 177) [AIR V 28] : ILR (1941) Lah 773 (DB).

**6. Repeals.**

\*[The undermentioned provisions] of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely :—

(1) Section 26 of the Bombay Regulation IV of 1827;

(2) Section 16 of the Madras Civil Courts Act, 1873;

b[\* \* \* \* \*]

(4) Section 3 of the Oudh Laws Act, 1876;

(5) Section 5 of the Punjab Laws Act, 1872;

(6) Section 5 of the Central Provinces Laws Act, 1875; and

(7) Section 4 of the Ajmere Laws Regulation, 1877.

[a] Substituted for "Provisions" by the Muslim Personal Law (Shariat) Application (Amendment) Act, 1943 (XVI of 1943), S. 3. [b] The words, figures and brackets "as section 37 of the Bengal, Agra and Assam Civil Courts Act, 1887" were omitted, *ibid.*

This omission has the effect of reviving the operation of S. 37 of that Act.

**[THE] MUSSALMAN WAKF ACT, 1923**

(ACT XLII of 1923)

[The Act printed here is as on 15-9-1960.]

**C O N T E N T S****PRELIMINARY****SECTIONS**

1. Short title, extent and commencement.

2. Definitions.

**STATEMENTS OF PARTICULARS**

3. Obligation to furnish particulars relating to wakf.

4. Publication of particulars and requisition of further particulars.

**STATEMENT OF ACCOUNTS AND AUDIT**

5. Statement of accounts.

6. Audit of accounts.

7. Mutwalli entitled to pay cost of audit, etc., from wakf funds.

8. Verification.

9. Inspection and copies.

**PENALTY**

10. Penalties.

**RULES**

11. Power to make rules.

12. Savings.

13. Exemption.

**STATEMENT OF OBJECTS AND REASONS**

"The object of the present Bill is sufficiently indicated by the preamble to the Bill. For several years past, there has been a growing feeling amongst the Muhammadan community, throughout the country, that the numerous endowments which have been made or are being made daily by pious and public-spirited Muhammadans are being wasted or systematically misappropriated by those into whose hands the trusts may have come in the

course of time. Instances of such misuse of trust property are unfortunately so very common that a *Waqf* endowment has now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. In some cases the *Mutwallis* are persons who are utterly unfit to carry on the administration of the *Waqf* and who, by their

**Section 6 — Note 1**

[1] Section 16 of the Madras Civil Courts Act was repealed but only so far as it was inconsistent with the provisions of the Central Act. It follows therefore that as regards matters not covered by the Central Act S. 16 continues to be applicable. 1956 Mad 244 (246) [AIR V 43 C 77] : ILR (1956) Mad 903 (DB). (Hence the Act which is applicable to

intestate succession cannot be applied to determine the rights and incidents of a Mappilla tarwad where no question of intestate succession arises. In these cases the Court is still entitled to apply the Marumakkathayam law in accordance with S. 16 of the Madras Civil Courts Act.)



moral delinquencies, bring discredit not merely on the endowment but on the community itself. It is believed that the feeling is unanimous that some step should be taken in order that incompetent and unscrupulous *Mutawallis* may be checked in their career of waste and mismanagement, and that the endowments themselves may be appropriated to the purposes for which they had been originally dedicated.

In some cases difficulties have arisen in finding out whether any particular properties are really subject to *Waqf* or not. There are numerous *Waqf* properties all over the country unknown to the public which the *Mutawallis* are treating as their own private property and dealing with in any way they think fit or necessary. It, therefore, seems that there should be a system of compulsory registration requiring a *Mutawalli* to notify to some responsible officer not merely about the fact of the *Waqf*, of which he is the *Mutawalli*, but also the nature and extent and other incidents of the endowment. Further, even where a *Waqf* is well-known and a *Mutawalli* is obvi-

ously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post by reason of the cumbrous procedure laid down in the Code of Civil Procedure. It is with a view to facilitate the institution of such suits that a provision has been made in the Bill. Lastly, there appears to be a general consensus of opinion amongst the Muhammadans throughout the country that there should be some responsible officer, who may go about and find for himself whether the various *Waqf* properties scattered throughout the country are being properly managed or not. It is not intended that Government should be called upon to bear the burden of appointing such an officer or his staff, and a provision has therefore been made in the Bill authorising the Central Committee (to be appointed in pursuance of the provisions of the Bill) to levy a rateable contribution from the *Mutawallis* for the purpose of meeting the cost on entertaining such an officer and his staff.... "

—Gaz. of Ind., 1921, Part V,  
page 182.

### EXTRACT FROM SELECT COMMITTEE REPORT

"In view of the opinions received and of certain difficulties which presented themselves to us in the course of our examination of the Bill, we have decided largely to reduce the scope of the Bill. We are, in the first place, impressed by the objection put forward by most Local Governments to the multifarious duties which the Bill as introduced imposes upon the District Officer, and we agree that the administration of the measure, even on the reduced scale which we now propose, ought not to be imposed upon that official.

In the second place, we consider that the difficulties attending the question of the appointment and constitution of District and Central Committees make it undesirable to retain the provisions of Chapter III and other provisions of the Bill consequential thereon. We realise that the appointment of such Com-

mittees by the Government might give rise to considerable misunderstanding and in some cases lead to a discontent. At the same time, we are of opinion that the labour and expense of conducting the elections to such Committees on anything like a representative basis would go far to affect the utility of the proposed measure.

We further observe that some of the provisions of the Bill reproduce to a certain extent the provisions of existing enactments.

After full consideration of the whole question, we have decided that the Bill should make provision only for the compulsory rendition, as soon as possible after the commencement of the Act, of full particulars regarding each *waqf*, and thereafter of annual statements of accounts."

—Gaz. of Ind., 1923, Part V, page 130.

### COGNATE ACTS AND PROVISIONS

1. MUSSALMAN WAKF VALIDATING ACT, VI OF 1913.
2. MUSSALMAN WAKF VALIDATING ACT, XXXII OF 1930.
3. WAKF ACT, XXIX OF 1954.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Adapted by A. O., 1937; A. C. A. O., 1948; A. L. O., 1950; 3 A. L. O., 1956.
- Amended in its application to—
  - (a) Bombay by Bom. Acts XVIII of 1935; X of 1944; XV of 1945; XVII of 1945.
  - (b) Orissa by B. & O. Act I of 1920.
- Extended by Acts LIX of 1949; XXX of 1950.
- Extended in Bombay by Bom. Act IV of 1950.
- Extended in Madhya Pradesh by M. P. Act XII of 1950.
- Extended in Madras by Mad. Act XXXV of 1949.
- Adopted in Madhya Bharat by M. B. Act I of 1953.
- Repealed in part in Uttar Pradesh by U. P. Act XIII of 1936.
- Repealed in its application to—
  - (a) Bengal by Beng. Act XIII of 1934.
  - (b) Bihar by Bih. Act VIII of 1948.
  - (c) Delhi by Act XIII of 1943.
- Made non-applicable to which Act XXIX of 1954 applies.

[THE] MUSSALMAN WAKF ACT, 1923  
(ACT XLII OF 1923)\*

[5th August, 1923.]

*An Act to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties.*

WHEREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties; It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1921, Pt. V, p. 182; and for Report of Select Committee, *see* *Ibid*, 1923, Pt. V, p. 139.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States merged in the State of—

Bombay, by Bom. Act IV of 1950, S. 3 [30-3-1950].

Madhya Pradesh, by M. P. Act XII of 1950, S. 3 [3-4-1950].

Madras, by Mad. Act XXXV of 1949, S. 3 [1-1-1950].

It has also been adopted *mutatis mutandis* in Madhya Bharat by the M. B. Adoption of Laws Act, 1953 (I of 1953), S. 2 and Sch. [24-1-1953].

The Act shall not apply to any wakf to which the Wakf Act, 1954 (XXIX of 1954) applies—*see* S. 69 of that Act.

It does not apply also to wakfs to which Bihar Wakfs Act, 1947 (VIII of 1948) (*see* S. 4 (5) of that Act) and Delhi Muslim Wakfs Act, 1943 (XIII of 1943) (*see* S. 4 of that Act) apply.

Sections 5 to 10 of this Act shall not apply to any wakf to which the U. P. Muslim Waqfs Act, 1936 (XIII of 1936) applies—*see* S. 69 of that Act.

The Act has been repealed in its application to Bengal by the Bengal Wakf Act, 1934 (XIII of 1934), S. 82 and it has been repealed in part (namely, Ss. 3 and 4) in its application to the State of Uttar Pradesh by the U. P. Muslim Waqfs Act, 1936 (XIII of 1936), S. 70.

#### STATE AMENDMENT

#### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, after the preamble of the Mussalman Wakf Act, 1923, the heading "Part I" shall be inserted.

—Bom. Act XVIII of 1935, S. 2 [23-9-1935].

#### Preliminary

#### 1. Short title, extent and commencement.

(1) This Act may be called THE MUSSALMAN WAKF ACT, 1923;

\*[(2) It extends to the whole of India except <sup>b</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part B States].]

(3) This section shall come into force at once; and

(4) The <sup>a</sup>[State Government] may, by notification in the <sup>a</sup>[Official Gazette], direct<sup>c</sup> that the remaining provisions of this Act, or any of them which it may specify, shall come into force in the <sup>a</sup>[State], or any specified part thereof, on such <sup>c</sup>date as it may appoint in this behalf.

[a] Substituted for the former sub-section by A. L. O., 1950. [b] Substituted for "Part B States" by 3 A. L. O., 1956. Immediately before the 1st November, 1956, the following were Part B States : Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. [c] Ajmer-Merwara—Sections 2 to 13 were brought into force in Ajmer-Merwara from the 1st February, 1928, *see* Gazette of

#### Section 1 — Note 1

[1] All that Bombay Act (XVIII of 1935) amending the Mussalman Wakf Act, 1923, did was to amend with necessary sanction the Act of Central Legislature, and both must be read together and both apply to Bombay Presidency. 1940 Sind 219 (219) [AIR V 27] (DB).

[2] The Court has to enforce the Act even though the particular community concerned is reluctant to accept the Act and the mutawallis of wakfs created by that community are reluctant to comply with its provisions. 1942 Bom 152 (153) [AIR V 29] : ILR (1942) Bom 240 : 43 Cri L Jour 726 (DB).

India, 1928, Pt. II-A, p. 20. Bengal—Sections 2 to 13 were brought into force in the Presidency of Bengal with certain modifications from the 1st June, 1927, see *Calcutta Gazette*, Pt. I, p. 1008. But subsequently the whole Act was repealed by the Bengal Wakf Act, 1934 (XIII of 1934), S. 82. Bihar and Orissa—All provisions of the Act were brought into force in Bihar and Orissa from the 3rd September, 1925, see *Bihar and Orissa Gazette*, 1925, Pt. II, p. 1192. So far as Bihar is concerned now see *Bihar Act VIII of 1948*. Bombay—Sections 2 to 13 were brought into force in the Presidency of Bombay from the 1st June, 1925, see *Bombay Government Gazette*, 1925, Pt. I, p. 1414. Punjab—Sections 2 to 5 and 7 to 13 were brought into force in the Punjab with effect from the 14th May, 1924, see *Punjab Gazette*, 1924, Pt. I, p. 418.

## 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

- (a) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli;
- (b) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of a High Court, such Court, subordinate to the High Court, as the [State Government] may, by notification in the [Official Gazette], designate in this behalf;
- (c) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property;
- (d) "prescribed" means prescribed by rules made under this Act; and
- (e) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.

### Section 2 (b) — Note 1

[1] Under S. 2 (b) the District Judge can entertain an application to register a wakf under S. 3 and though the Court of an Additional District Judge is different from that of the District Judge, the District Judge can under S. 5 (2), Bengal, Agra and Assam Civil Courts Act, transfer the application for registration to the Additional District Judge, who on such transfer can deal with the matter. (42) 1942 Pat W N 94 (96, 97).

### Section 2 (c) — Note 1

[1] District Judge has no jurisdiction to pass any order appointing a mutwalli under S. 2 (c). But the District Judge can in exercise of powers of Qazi appoint a mutwalli in proper circumstances. 1933 Lah 27 (28) [AIR V 20].

### Section 2 (e) — Note 1

[1] In order to constitute a property a wakf property within the meaning of this clause there should be evidence of dedication of that property to purposes which could bring into existence a wakf. 1930 Oudh 509 (510) [AIR V 17] (DB).

[2] The definition excludes from the purview of the expression 'wakf' all private wakfs, which were validated by the Mussalman Wakf Validating Act of 1913. Under the definition

it is necessary that the person who makes a permanent dedication must be a Mussalman and that the dedication must be for purposes recognised by Mussalman Law as pious, religious or charitable. The expression wakf as used in the Act seeks to include substantially all wakfs which may be regarded as 'public wakfs' for the immediate appropriation to charity as distinguished from wakfs, alid aulad. 1953 Bom 92 (94) [AIR V 40 C 29] + 1932 All 322 (364) [AIR V 19] : 54 All 475 (DB).

[3] A wakf, the purpose of which is partly public and partly private, comes within the purview of S. 2 (e). 1929 Oudh 225 (228, 229) [AIR V 16] : 4 Luck 429 (FB) + 1933 Cal 581 (582) [AIR V 20] : 60 Cal 390 (DB) (1943) Mad 234 (234, 235) [AIR V 30]. (Section 3, Mussalman Wakf Validating Act, 1913, cannot apply to wakfs which subserve two purposes partly charitable and partly private but must apply to wakfs originally designed to serve one purpose only and that is private. Hence application under Ss. 7, 9, and 10, Mussalman Wakf Act, 1923, is maintainable with respect to such a wakf by reason of S. 2 (e) of that Act.)

[4] The Act will govern a wakf even if it is not public within the meaning of S. 92, Civil P. C. 1946 Lah 209 (216) [AIR V 33 C 38] : ILR 1945 Lah 554 (DB). (Hence any person, who is interested in the wakf is at liberty to

## STATE AMENDMENT

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra,

(1) in section 2—

(i) after clause (b), *insert* the following, namely,—

“(bb) ‘District’ means a district constituted under section 3 of the Bombay Civil Courts Act, 1869, and includes the Greater Bombay.”

(ii) after clause (e), *add* the following, namely,—

“(ee) ‘Wakf Committee’ means a committee constituted under S. 6-L.”

—Bom. Acts XVIII of 1935, S. 3 [23-9-1935] & XVII of 1945, S. 9 & Sch. E.

(2) after S. 2, the heading “Part II” shall be inserted, *ibid*, S. 4.

*Statements of Particulars***3. Obligation to furnish particulars relating to wakf.**

(1) Within six months from the commencement of this Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated or to any one of two more such Courts, a statement containing the following particulars, namely :—

- (a) a description of the wakf property sufficient for the identification thereof;
- (b) the gross annual income from such property ;

**Section 2 (e) — Note 1 (contd.)**

take action under the Act and call upon the persons in charge to render accounts and to satisfy the Court that the income is being spent on proper objects—Note—This case has been reversed in AIR 1948 P C 163 on another point.)

[5] The provisions of Mussalman Wakf Act, 1923, are applicable to a mixed wakf i. e. one that is partly a public wakf, that is devoted entirely to religious purposes and partly a private wakf. That part of the wakf which does not fall under S. 3, Mussalman Wakf Validating Act, 1913, is governed by Wakf Act, 1923. 1944 Bom 91 (93) [AIR V 31].

[6] For the purpose of constituting a wakf within the meaning of the clause it is not necessary that there should be an immediate dedication of the entire income of a property to the charity. It is open to a settlor to direct the use of a part of the income of his property for purposes which are regarded by the Mussalman Law as religious, pious or charitable and to divert the rest of the benefit to purposes which may be temporal either permanently or for a limited period, with an ultimate benefit to the charity. To the extent to which provision is made by immediately dedicating income of property for purposes which are religious, pious or charitable, there results a wakf which satisfies the definition in cl. (e) of S. 2 of the Act. 1953 Bom 92 (94) [AIR V 40 C 30].

[7] Where substantial portion of profits of endowed property is earmarked for support and maintenance of specified individuals who are relations of settlor and remaining portion for public of Shia community, wakf is not wholly for public purposes and the Charitable and Religious Trusts Act, 1920, and the Mussalman Wakf Act, 1923, are not applicable to it. 1930 Oudh 53 (54) [A I R V 17] : 5 Luck 489 (DB).

[8] Wakf created among other charitable purposes for maintenance and support of

wakif's wife and children—Wakf comes under S. 3, Mussalman Wakf Validating Act—Provisions of Mussalman Wakf Act, 1923, will not apply until after death of such persons in view of Ss. 2 (e) and 3 (3) (b). 1937 Oudh 454 (455, 456) [AIR V 24] : 13 Luck 446 (DB).

[9] It cannot be said that the only person who can dedicate property must be a beneficial owner. The collection of money on terms which made it charitable in hands of trustees the subsequent investment of that money by the trustees in immovable property and their declaration of trust of that immovable property for the charitable purpose for which it was held constitute a good dedication. 1941 Bom 152 (153) [A I R V 28] : 1 L R 1941 Bom 328 : 42 Cri L Jour 517 (DB).

[10] The application of the Act does not depend upon the attitude of the mutwalli with regard to the origin of an alleged wakf. 1952 Oudh 210 (211) [AIR V 19] : 7 Luck 601 (FB).

**Section 3 — Note 1**

[1] Section 3 indicates that the Act applies to any property of a wakf within the jurisdiction of the local Court. A mutwalli with property within the local limits of the Small Cause Court at Bombay must furnish under S. 3 the required particulars although other properties of wakf may be situate and those who benefit from the wakf may be resident outside Bombay or outside British India. 1941 Bom 152 (153) [AIR V 28] : 1 L R (1941) Bom 328 : 42 Cri L Jour 517 (DB).

[2] District Judge cannot suo motu pass orders calling mutwalli to file particulars under S. 3. 1946 Mad 146 (147) [A I R V 33 C 83].

[3] The District Judge has no jurisdiction to appoint a receiver in proceeding started on an application for direction on a mutwalli to file particulars and accounts contemplated by the Act. An order appointing a receiver is therefore without jurisdiction and is liable to be set aside in revision though no appeal lies

- (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter ;
  - (d) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property ;
  - (e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate ;
  - (f) the amount set apart under the wakf for —
    - (i) the salary of the mutwalli and allowances to individuals ;
    - (ii) purely religious purposes ;
    - (iii) charitable purposes ;
    - (iv) any other purposes ; and
  - (g) any other particulars which may be prescribed.
- (2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.
- (3) Where —
- (a) a wakf is created after the commencement of this Act, or
  - (b) in the case of a wakf such as is described in section 3 of the Wakf Validating Act, 1913, the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder,

the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.

**Section 3 — Note 1 (contd.)**

against such an order. 1936 Cal 420 (420) [AIR V 23] (DB).

[4] The Act merely confers administrative powers upon the "Court". The object is to have on record full particulars of all wakf property and to enforce that the mutwalli shall honestly carry out the provisions of the trust imposed upon him, and to have in a convenient place information available to the public, or to any beneficiary of the wakf, in order that they may see whether the wakf property is being properly administered. If it is not, any one may file an information against the mutwalli so that the penalty imposed by S. 10 of the Act may be inflicted upon him. The "Court" is nowhere in the Act said to be acting in its judicial capacity. 1941 Lah 145 (148) [AIR V 25] : ILR 1941 Lah 395 (FB).

[5] Section 3 (2) provides for an inquiry as to the origin, nature and objects of the wakf whether such wakf was made orally or by means of an instrument. No doubt the inquiry in such cases must be a summary inquiry and will not be conclusive between the parties in any future controversy as regards the origin, nature and objects of the wakf but the Act

does not exclude such enquiry altogether. 1932 Oudh 210 (212) [AIR V 19] : 7 Luck 601 (FB).

[6] If a mutwalli has complied with the provisions of S. 3 no question as to whether he admits the wakf or denies it can arise because by his conduct in furnishing the particulars of the wakf property he must be deemed to have admitted the wakf and his own position as mutwalli. 1932 All 362 (364) [AIR V 19] : 54 All 475 (DB).

[7] The Court designated to receive the particulars referred to in the Act cannot enter into an elaborate inquiry as to the existence of the wakf or to determine the right to mutwalliship between rival claimants. By leaving the right to mutwalliship under the object of the Act is not frustrated because Ss. 5 and 10 act as preventive against applications under S. 3 being made by persons who are not actual mutwallis. 1938 Pat 137 (138, 139) [AIR V 25].

[8] A person who has not even complied with this section cannot be said to have committed the offence of non-compliance with S. 5. Prior compliance with this section is necessary to bring into operation S. 5. 1949 Nag 137 (139) [AIR V 36 C 55] : ILR (1949) Nag 18 (FB).

## STATE AMENDMENT

## UTTAR PRADESH

Section 3 in its application to Uttar Pradesh is repealed.

—U. P. Act XIII of 1936, S. 70 [1-7-1941.]

**4. Publication of particulars and requisition of further particulars.**

(1) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

(2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.

## STATE AMENDMENT

## UTTAR PRADESH

Section 4 in its application to Uttar Pradesh is repealed.

—U. P. Act XIII of 1936, S. 70 [1-7-1941.]

*Statement of Accounts and Audit***\*5. Statement of accounts.**

Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and

**Section 5 — Note 1**

[1] There cannot be any offence under S. 5 unless a statement has been delivered under S. 3; S. 5 cannot come into operation unless S. 3 has been complied with. 1941 Bom 152 (153) [AIR V 28]; 11LR (1941) Bom 328; 42 Cri L Jour 517 (DB) + 1949 Nag 137 (139) [AIR V 36 C 55]; 11LR (1949) Nag 18 (FB).

[2] The fact that his predecessor had failed to comply with S. 3 cannot be relied on by a succeeding mutawalli to escape the liability to furnish accounts under S. 5. He cannot plead that he is only continuing an abuse started by his predecessor and thereby try to escape the consequences of his default. 1943 Oudh 212 (213) [AIR V 30].

[3] A District Judge has power to scrutinise the accounts furnished by a mutwalli under S. 5 and disallow any inadmissible items of expenditure and order an amended statement of accounts to be filed. 1943 Nag 238 (239) [AIR V 30]; 11LR (1943) Nag 338.

[4] Apart from proceedings under S. 10 the District Judge cannot decide on merits the question as to the nature of the wakf or adjudicate upon the question whether the applicant was liable to furnish accounts under S. 5 or not. If the case falls under the Act then S. 5 lays down a substantive law which makes it incumbent on the mutwalli to file the statement under S. 5. There is no provision in the Act by which an alleged mutwalli can ask the Court to adjudicate upon

whether he was liable to furnish accounts under S. 5 or not. 1940 Oudh 313 (314) [AIR V 27] (DB).

[5] Section 5 does not by itself contemplate the intervention of other persons for compelling the mutwalli to file his accounts except possibly as a mere reminder to the Judge that the accounts have not been filed with a view to induce the Judge to take proceedings under S. 10. There is no authority in the District Judge to pass an order that the mutwalli should file a statement of accounts. The only procedure provided is to punish him under S. 10 for not filing it. 1930 All 81 (81, 82) [AIR V 17]; 52 All 167 (DB).

[6] Where mutwalli does not deny that there is valid wakf but only denies that the wakf is a trust within S. 3, Charitable and Religious Trusts Act, 1920, and that he is a trustee, it is open to the District Judge to proceed under Mussalman Wakf Act, 1923, and call upon the mutwalli to furnish accounts. 1931 Pat 354 (356) [AIR V 18]; 10 Pat 506 (DB).

[7] Where the documentary evidence produced in the Court shows that the wakf is not public but private and further there is nothing on record to justify the inference that the wakf is one to which the provisions of S. (2) (e) apply, the Court cannot direct accounts to be furnished under S. 5. 1951 Ajmer 79 (1) (79) [AIR V 38 C 75].

containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty-first day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf :

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

[a] The provisions of sections 5 to 10 do not apply to any Wakf to which the United Provinces Muslim Wakfs Act, 1936 (XIII of 1936) applies, — See S. 69 of that Act, [1-7-1941].

#### \*6. Audit of account.

Every statement of accounts shall, before it is furnished to the Court under section 5, be audited:—

(a) in the case of a wakf the gross income of which during the year in question, after deduction of the land-revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the <sup>A</sup>[Central Government] under section 144 of the Indian Companies Act, 1913,<sup>B</sup> or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout the <sup>C</sup>[territories to which this Act applies] ; or

(b) in the case of any other wakf, by any person authorised in this behalf by general or special order of the said Court.

[a] See Foot-note (a) under S. 5. [b] See now the relevant provisions of the Companies Act, 1956 (I of 1956). [c] Substituted for "Provinces" by A.L.O., 1950.

### STATE AMENDMENT

#### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra,

(1) after section 6, the following parts shall be inserted, namely :—

#### "PART III.

*Powers of the Court to call for Particulars and Statement of Accounts.*

**6-A. Power of Court to call upon the mutawalli to submit statement.** — (1) Notwithstanding anything contained in section 3, it shall be competent to the Court, on failure of a mutawalli to furnish a statement as required under the said section, to require the mutawalli to furnish, within such time as the Court shall fix, a statement containing all or any of the particulars referred to in the said section, including a copy of the deed or instrument, if any, creating the wakf.

(2) The provisions of section 4 shall apply to a statement furnished under this section as if such statement had been furnished under section 3.

**6-B. Power of Court to require statement of accounts at any time.** — (1) Notwithstanding anything contained in section 5, it shall be competent to the Court, on failure of a mutawalli to furnish a statement of accounts as required under the said section, to require the mutawalli to prepare and furnish, within such time as the Court may fix, a statement of accounts of the nature described in the said section and for such period as the Court may think fit.

(2) The provisions of section 6 shall apply to any statement of accounts required to be furnished under this section as if such statement of accounts were a statement of accounts furnished under section 5.

#### Section 6A (Maharashtra) — Note 1

[1] Where special order is made under S. 6-A directing certain particulars and accounts to be delivered by accused within fixed period and that order has been disobeyed, the accused are guilty of contempt of Court which can be dealt with by the High Court under the Contempt of Courts Act. 1942 Bom

152 (153) [AIR V 29] : ILR 1942 Bom 240 : 43 Cri. L. Jour 726 (DB) + 1945 P C 147 (151) [AIR V 32] : 72 Ind App 226 : 47 Cri. L. Jour 61 : ILR (1945) Kar (PC) 355 : ILR (1945) Bom 959 + 1942 Bom 154 (154) [AIR V 29] : 43 Cri L Jour 697 (DB).

## PART IV.

*Powers of the Court to Enquire.*

**6-C. Power of Court to enquire.** — (1) The Court may, either on its own motion or upon the application of any person claiming to have an interest in a wakf, hold an enquiry in the prescribed manner at any time to ascertain —

- (i) whether a wakf exists ;
- (ia) whether such wakf is a wakf to which this Act applies <sup>a</sup> ;
- (ii) whether any property is the property of such wakf and whether the whole or any substantial portion of the subject-matter of such wakf is situate within the local limits of the jurisdiction of the Court ; and
- (iii) who is the mutawalli of such wakf.

(2) If it comes to the knowledge of the Court that a suit has been instituted in any civil Court in regard to any of the matters mentioned in sub-section (1), it shall stay the enquiry so far as it relates to, or is likely to be affected by, the Court's findings or order in regard to such matters, until the suit is finally decided in that Court.

(3) The Court shall from time to time ascertain whether such suit has been finally decided and after the final decision of the suit, it shall proceed with the enquiry in regard to such matters, if any, as may not have been decided in such suit.

(4) On completion of the enquiry provided for in sub-sections (1) and (3), the Court shall record its findings as to the matters mentioned in the said sub-sections, except such matters as may have been decided in the aforesaid suit.

(5) Save as provided in this section, the Court shall not, when acting under this section, try or determine any question of the title of any person claiming adversely to the wakf.

[a] See Sind Act XXIII of 1947, S. 2 [17-4-1947].

## PART V.

*Registration of Wakfs, Wakf Accounts and Wakf Administration Funds.*

**6-D. Registration of Wakfs.** — (1) The Court shall, after the submission of a statement under section 3 or section 4 or section 6A and an enquiry, if necessary, held under section 6C, or merely after an enquiry held under section 6C, record, in such form as may be prescribed in a register called the Register of Wakfs, the following particulars :—

- (a) a description of the wakf property sufficient for the identification thereof ;
- (b) the gross annual income from such property ;
- (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or during the period which has elapsed since the creation of the wakf, whichever period is shorter ;
- (d) the amount of the Government revenue and cesses and of all rents annually payable in respect of the wakf property ;
- (e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate ;

**Section 6C (Maharashtra) — Note 1**

[1] Inquiry under S. 6-C (1) (i), can be held only where existence of waqf is admitted. Where existence of waqf is disputed District Court cannot enquire into its existence. 1945 Bom 157 (161) [AIR V 32] : ILR (1945) Bom 257 (DB).

[2] Question whether property is waqf property, is one which Court can inquire into under S. 6-C, but it cannot be referred to waqf committee under S. 6M as amended in Bombay. 1942 Bom 152 (153) [AIR V 29] : ILR (1942) Bom 240 : 43 Cri L Jour 726 (DB).

[3] Where the Judge refers a question which he ought to decide after holding an enquiry himself under S. 6(c) to the wakf committee and merely accepts the evidence which had been filed before the wakf committee and agrees with the conclusion which the committee had arrived at, the procedure is wrong. Evidence given before committee is not made evidence in proceedings before the Court and the Judge ought to hear the accused and take evidence. 1942 Bom 152 (153) [AIR V 29] :

I L R (1942) Bom 240 : 43 Cri L Jour 726 (DB).

[4] Where the notice served on the accused does not specify that it related to an inquiry under S. 6(c) it is open to the accused to say that he had no idea that an inquiry under S. 6(c) was being held and that if he had known the same he would have adopted different tactics from those which he did adopt. 1942 Bom 152 (153) [AIR V 29] : ILR (1942) Bom 240 : 43 Cri L Jour 726 (DB).

[5] Section 6C empowers Court of District Judge, either suo motu or upon application of any person claiming interest in waqf, to hold inquiry to ascertain whether waqf is a waqf to which Act applies. Thus the decision given is the decision of a Court which is subordinate to the High Court and, revision application under S. 115, Civil P.C., is maintainable. 1944 Bom 91 (92) [AIR V 31].

[6] In view of S. 6F, as amended in Bombay no appeal can lie from decision of the District Court on an inquiry under S. 6C. 1942 Bom 279 (280) [AIR V 29] (DB).



(f) the amount set apart under the wakf for—

- (i) the salary of the mutawalli and allowances to individuals ;
- (ii) purely religious purposes ;
- (iii) charitable purposes ;
- (iv) any other purposes ;

(g) the name of the mutawalli ; and

(h) such other particulars as may be prescribed.

(2) Statements, if any, furnished under sections 3, 4 and 6A shall be filed with the said Register of Wakfs.

**6-E. Amendment of entries in Register of Wakfs.**—(1) When any change occurs in any of the particulars recorded in the Register of Wakfs, the mutawalli shall, within three months of the occurrence of such change, report to the Court such change in the prescribed form, accompanied by the prescribed fee. The provisions of sections 3 and 4 shall, so far as may be, apply to any such statement.

(2) For the purpose of verifying the correctness of the entries in the Register of Wakfs or ascertaining any change which may have occurred in such register, the Court may hold an enquiry in the prescribed manner. The provisions of section 6C shall, so far as may be apply to any such enquiry.

(3) If the Court, after receiving a report under sub-section (1) and holding an enquiry, if necessary, under sub-section (2), or merely after an enquiry held under sub-section (2), is satisfied that a change has occurred in any of the particulars recorded in the Register of Wakfs with regard to a wakf, it shall amend in the prescribed manner the entry or entries affected by such change and shall file the report furnished under sub-section (1) along with the statement, if any, relating to the said wakf filed under section 3.

**6-F. Entries in the Register of Wakfs and findings recorded under section 6C to be final subject to section 6G.**—The entries made by the Court in the Register of Wakfs and the findings recorded under section 6C shall subject to the provisions of section 6G, be final for the purposes of this Act.

**6-G. Making or amendment of entries in Register of Wakfs by order of Court.**—A civil Court of competent jurisdiction deciding any question relating to any wakf may direct that the Court shall make such entries or amendments of entries in the Register of Wakfs relating to the said wakf as are consequential upon its decision, and the Court shall make such entries or amendments of such entries accordingly.

**6-H. Maintenance of accounts and their audit.**—(1) Every mutawalli of a wakf in respect of which an entry has been recorded in the Register of Wakfs shall keep regular accounts of all movable and immovable property received, and of all payments and alienations made and incumbrances created by him on behalf of the wakf of which he is the mutawalli. Such accounts shall be kept in such form and shall contain such particulars as may be prescribed.

(2) The account shall be balanced on the thirty-first day of March in each year, and shall be examined and audited annually or at such other intervals, and in such manner as may be prescribed and by the persons referred to in section 6.

(3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers and other documents and records in the possession and under the control of the mutawalli :

Provided that, if it is proved to the satisfaction of the Court that the gross annual income of any particular wakf is less than two hundred rupees, the Court may by order in writing exempt such wakf from the provisions of this section.

**6-I. Annual contribution from wakfs.**—Every wakf shall, for the purpose of meeting the charges and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the registers of wakfs, the scrutiny and audit of accounts of Wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act, be liable to pay to the Wakf Administration Fund of the district concerned annually such contribution, on such date and in such manner as may be prescribed .

Provided that the (Provincial Government) may, by rules made in this behalf, exempt from the provisions of this section any particular wakf or class of wakfs.

#### Section 6-I (Maharashtra) — Note 1

[1] Where the Mutwallis reside within the jurisdiction of the District Court but the property of the wakf is situate beyond its jurisdiction, the Mutwallis cannot be called upon to contribute to the Wakf Administration Fund under S. 6-I. Section 3 of the main

Act and S. 6-I) as amended in Bombay make it clear that the property of the wakf referred to in the sections is the corpus and not the income. 1939 Bom 447 (448) [AIR V 26] : ILR (1939) Bom 611 (DB).

**6-J. Wakfs Administration Fund.**—For each district there shall be created a fund to be called the Wakf Administration Fund of the district concerned, and there shall be placed to the credit thereof the following sums, namely :—

- (a) any fee which may be levied under this Act,
- (b) contributions under section 6-I,
- (c) any sums received by the Wakf Administration Fund from private sources,
- (d) any sums allotted by (any Government) or by any local authority to the Wakf Administration Fund.

**6-K. Application of Wakf Administration Fund.**—The Wakf Administration Fund of a district shall be under the control and management of the Court and shall be applicable to the payment of charges for and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the Register of Wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act.

## PART VI.

### SUPERVISION AND CONTROL.

**6-L. Constitution and appointment of Wakf Committee.**—(1) There shall be constituted in each district a Wakf Committee to advise and assist the Court in all matters relating to the registration, superintendence, administration and control of wakfs.

(2) The Committee shall consist of :—

- (a) the members of the Indian and State Legislatures.
- (b) two members elected in the prescribed manner by the mutawallis of all wakfs in the district registered under the Act,
- (c) two members elected in the prescribed manner by the members of each District Local board in the district professing the Mussalman faith from among their number,
- (d) one member elected in the prescribed manner by the members professing Mussalman faith of each municipality in the district constituted under the Bombay District Municipal Act, 1901,
- (e) two members elected in the prescribed manner by the members professing the Mussalman faith of each municipality in the district constituted under the City of Bombay Municipal Act, 1888, the City of Karachi Municipal Act, 1933, or the Bombay Municipal Boroughs Act, 1925, and
- (f) such other members not exceeding one-fourth of the total number of the members of the Committee as the State Government may nominate :

Provided that no person who does not ordinarily reside in the district or does not profess the Mussalman faith shall be eligible to be a member of the Committee.

**6-M. Functions of Wakf Committee.**—(1) It shall be competent to the Court to refer at any time to the Wakf Committee or any three or more members thereof, for advice, opinion, enquiry, report or recommendation, within such time as the Court may direct, any matter relating to the registration, superintendence, administration, and control of wakfs, and in particular any matter relating to—

- (a) the conduct of a mutawalli or a trustee in the administration of a wakf or his fitness to continue as a mutawalli or a trustee.
- (b) the settlement, cancellation or alteration of a scheme for the administration of a wakf, or
- (c) the application of the funds of a wakf or any surplus thereof.

(2) When the Court has referred any of the matters mentioned in sub-section (1) to a wakf committee or any members thereof for advice, opinion, enquiry, report or recommendation, and the committee or the members thereof, as the case may be, have, either unanimously or by a majority, made their recommendation in relation to the matter referred to them, the Court may pass orders as it thinks fit after giving due consideration to such recommendation—

- (i) suspending, removing or dismissing a mutawalli or trustee,
- (ii) appointing a new mutawalli or trustee,
- (iii) settling, cancelling or altering a scheme for the administration of wakf,
- (iv) directing the application, investment or deposit of the funds of a wakf or any surplus thereof in a particular manner or to a particular purpose.
- (v) generally for carrying out the purposes of the Act.

Provided that nothing in this section shall be deemed to authorise the Court to pass any order which is inconsistent with the objects and purposes of the wakf.

Provided further that no order under this section shall be passed to the prejudice of any mutawalli or trustee without giving such mutawalli or trustee an opportunity to be heard.

(3) For the performance of any of the duties under sub-section (2) the Wakf Committee or any members thereof to whom the Court has referred any matter for advice, opinion, enquiry,

report, or recommendation, the committee or such members thereof may by order in writing require—

- (a) the production of any document necessary for the purpose ;
- (b) the attendance of any person for the purpose of giving evidence or for the production of any document referred to in clause (a).

(4) The provisions of sub-sections (2) and (3) of section 6-C shall, so far as may be, apply to any inquiry under sub-section (1) or (2).

**6-N. Court's power to authorise members of Wakf Committee to institute suits, etc.** — Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908, it shall be competent to the Court, after such enquiry as it may think fit, (a) to authorise any one or more of the members of a Wakf Committee to institute or defend any suit or proceeding for the purposes of the protection or recovery of the property of a wakf or for the application of the property of a Wakf to any public, charitable or religious purpose and (b) to allocate from the Wakf Administration Fund such sums as may, in the opinion of the Court, be necessary for the aforesaid purpose.

**6-O. Inspection of wakf property, records and accounts.** — (1) It shall be competent to the Court to direct one or more members of the Wakf Committee to undertake the inspection, in the prescribed manner, of the property, records and accounts of any wakf and to report to the Court, within such time as the Court may direct, the result of such inspection.

(2) It shall be competent to the Court to employ upon such terms and conditions as may be prescribed such persons as may in the opinion of the Court be necessary for carrying out the purposes of this Act and to pay them such remuneration from the Wakf Administration Fund as may be prescribed.

**6-P. Court's power to order special audit.** — It shall be competent to the Court at any time to order a special audit of the accounts of a Wakf by an accountant possessing the prescribed qualifications and to order the cost of such audit to be paid by the mutawalli from the income of the property of the Wakf or out of the Wakf Administration Fund.

**6-Q. Publication of lists of wakfs.** — There shall be published annually on such date as the State Government may determine in the (Official Gazette) and if the State Government so directs in the principal vernacular of the district in a newspaper circulating therein a list of Wakfs and a statement of the sums standing to the credit of the Wakf Administration Fund under the signature of the Court and in such form as the State Government may prescribe.

— Bom. Act XVIII of 1935, S. 5. [23-9-1935] as amended by Bom. Acts X of 1944 and XV of 1945.

(2) after section 6-Q inserted by Bom. Act XVIII of 1935 the heading "Part VII" shall be inserted. — Bom. Act XVIII of 1935, S. 6. [23-9-1935]

#### General Provisions

### \*7. Mutawalli entitled to pay cost of audit, etc., from wakf funds.

Notwithstanding anything contained in the deed or instrument creating any wakf, every mutawalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act.

[a] See Foot-note (a) under Section 5.

#### STATE AMENDMENT

#### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in S. 7 after the word and figure 'S. 4', the words and figures "S. 6A or S. 6B or S. 6C or S. 6E" shall be inserted.

— Bom. Act XVIII of 1935, S. 7. [23-9-1935.]

### \*8. Verification.

Every statement of particulars furnished under section 3 or section 4, and every statement of accounts furnished under section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings.

[a] See Foot-note (a) under Section 5.

#### STATE AMENDMENTS

#### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 8—

(a) after the word and figure 'section 4' the words and figures "or section 6A or section 6C or section 6E" shall be inserted; and

(b) after the word and figure 'section 5' the words and figures "or section 6B or section 6C" shall be inserted. — Bom. Act XVIII of 1935, S. 8. [23-9-1935.]

**ORISSA**

In section 8, the words "in Urdu or" shall be read after the word 'written'.

—Bihar and Orissa Act I of 1926, S. 2. [w. e. f. 15-5-1926.]

**\*9. Inspection and copies.**

Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4, or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6.

[a] See Foot-note [a] under S. 5.

**STATE AMENDMENTS****MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra, in section 9—

(a) after the word and figure 'section 4', the words and figures "or section 6A or section 6C or section 6E" shall be *inserted*;

(b) after the word and figure 'section 5', the words and figures "or section 6B or section 6C" shall be *inserted*;

(c) after the word and figure 'section 6', the words and figures "or section 6H or section 6P or any entry in the Register of Wakfs or any statement, notice, intimation, report, accounts or any document filed under this Act" shall be *inserted*.

—Bom. Act XVIII of 1935, S. 9 [23-9-1935].

**SECTION 9-A****MAHARASHTRA**

In its application to Bombay area of the State of Maharashtra.

(1) After section 9, the following shall be *inserted*, namely:—

**"9A. Provisions of Code of Civil Procedure to apply.**

(1) The provisions of the Code of Civil Procedure, 1908, relating to—

(a) the proof of facts by affidavits,

(b) the enforcing of the attendance of any person and his examination on oath,

(c) the enforcing of the production of documents, and

(d) the issuing of commissions,

shall apply to all proceedings held by the Court under this Act and provisions relating to the service of summonses shall apply to the service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders passed by the Court under this Act."

—Bom. Act XVIII of 1935, S. 10 [23-9-1935].

(3) After section 9A inserted by Bom. Act XVIII of 1935, the heading "Part VIII" shall be *inserted*, *ibid*, section 11.

**Penalty****\*10. Penalties.**

Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall lie upon him, fails to furnish such statement or document, as the case may be, in due time, or furnishes a state-

**Section 10 — Note 1**

[1] Under the Act the law imposes certain duties on a class of individuals and it must be presumed that it was further intended that the duties should be performed by those individuals and in the absence of voluntary performance, performance should be enforced. Section 10 which provides for penalties for failure to comply with the requirements of the Act clearly implies jurisdiction in the Court to enforce compliance with the provisions of the Act. 1932 Oudh 210 (212) [AIR V 19] : 7 Luck 601 (FB).

[2] In proceedings under S. 10 the Court has jurisdiction to inquire whether property is wakf within the meaning of the Act or not.

There is no foundation for the argument that the Act only applies in cases in which the wakf is admitted. 1934 Bom 169 (170) [AIR V 21] : 58 Bom 302 (DB) \* 1932 All 362 (364) [AIR V 19] : 54 All 473 (DB) \* 1930 All 81 (81) [AIR V 17] : 52 All 167 (DB) \* 1940 Nag 161 (161) [AIR V 27] : ILR 1941 Nag 613 \* 1932 Oudh 210 (213) [A I R V 19] : 7 Luck 601 (FB).

[But see 1941 Mad 897 (898) [AIR V 28] : ILR (1942) Mad 143. (District Judge has no jurisdiction to hold enquiry into nature of property where alleged Mutwalli denies existence of wakf.) \* 1935 All 254 (255) [AIR V 22] : 57 All 754 (Do) \* 1941 Lah 145 (147, 149) [AIR V 28] : ILR (1941) Lah 395 (FB).

ment which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by section 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

[a] See Foot-note [a] under S. 5.

## STATE AMENDMENTS

### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, in section 10—

- (a) after the word and figure 'section 4', the words and figures "or section 6A or section 6C or section 6E" shall be inserted;
- (b) after the word and figure 'section 5', the words and figures "or section 8B or section 6C" shall be inserted;
- (c) after the word 'accounts' where it occurs for the first time, the words, figure and letter "or who is required by section 6H to keep regular accounts" shall be inserted;
- (d) after the word 'document' where it occurs for the second time, the words "or to keep regular accounts" shall be inserted;
- (e) after the word 'statement' where it occurs for the fourth time, the words "or keeps accounts" shall be inserted. — Bom. Act XVIII of 1935, S. 12. [23-9-1935].

### SECTIONS 10A to 10D

#### MAHARASHTRA

In its application to Bombay area of the State of Maharashtra, after section 10, the following shall be inserted, namely:—

**10-A. Penalty for non-compliance with any other order.**—(1) If any person fails to comply with any order passed by the Court or by the Wakf Committee or any member

#### Section 10 — Note 1 (contd.)

(Do.) + 1939 Nag 205 (207) [AIR V 26] : ILR (1939) Nag 564 (DB) (Do.)

[3] If a Mutwalli has complied with S. 3 no question whether he denies or admits the wakf can arise because by his conduct in furnishing the particulars of the wakf property under S. 3 he must be deemed to have admitted the wakf and can be convicted under S. 10 for his failure to file statement under S. 5. 1932 All 362 (364) [AIR V 19] : 54 All 475 (DB).

[4] Prosecution under S. 10—Civil suit involving bona fide dispute as to whether property is wakf or not turning on construction of document and evidence as to religious views of donor—Prosecution was stayed. 1954 Bom 169 (171) [AIR V 21] : 58 Bom 302 (DB).

[5] District Judge is proper authority to impose penalty provided for by S. 10. It is not necessary to proceed against mutwalli in criminal Court. 1932 All 362 (364) [AIR V 19] : 54 All 475 (DB) + 1930 All 81 (81) [AIR V 17] : 52 All 167 (DB) + 1935 Bom 207 (208) [AIR V 22] + 1943 Nag 238 (239) [AIR V 30] : ILR (1943) Nag 335. (Only Court contemplated by Act is the one defined in S. 2 (b) and the scheme of Act shows that Act is to be administered throughout by that Court alone.)

[But see 1949 Nag 137 (139) [AIR V 38 C 55] : ILR (1949) Nag 15 (FR). (AIR 1937 Nag 135, *Overruled.*) + 1928 Sind 43 (44) [AIR V 15] : 22 Sind L R 141 : 28 Cri L Jour 954. (Offence under S. 10 must be dealt with by a Magistrate.) + 1941 Lah 145 (147, 149) [AIR V 28] : ILR (1941) Lah 395 (FR). (Do.) + 1941 Mad 897 (897) [AIR V 28] : ILR (1942) Mad 143 (Do.).]

[6] Apart from the proceedings under S. 10 there is no provision in the Act by which the District Judge can decide on merits the question as to the nature of the wakf or adjudicate

upon the question whether an alleged Mutwalli was liable to furnish accounts under S. 5 or not. 1940 Oudh 315 (314) [AIR V 27] (DB).

[7] Act confers no authority on Court to pass order that Mutwalli should file statement of accounts. Only procedure provided is to punish him for not filing it. 1930 All 81 (82) [AIR V 17] : 52 All 167 (DB).

[8] Mutwalli at time when Act came into force not complying with S. 3—Still the subsequent Mutwalli not furnishing accounts under S. 5 is guilty under S. 10. 1943 Oudh 212 (213) [AIR V 30].

[9] No provision is made in S. 10 for imposing a sentence of imprisonment in default of payment of fine and such sentence therefore cannot be imposed. No portion of the fine when realized should be ordered to be paid to the informer. 1932 All 389 (390) [AIR V 19] (DB).

[10] Under S. 10 the District Judge has power to scrutinise the accounts filed by the Mutwalli under S. 5 and disallow any inadmissible items of expenditure and order the statement of accounts to be amended. If the Mutwalli fails to amend the accounts the District Judge can impose a fine on him under S. 10. 1943 Nag 238 (239) [AIR V 30] : ILR (1943) Nag 538.

[11] An order appointing a receiver in a proceeding under the Act is not appealable as no appeal lies against an order in a proceeding under the Act. 1936 Cal 420 (420) [AIR V 23] (DB).

[12] If the requirements of S. 115, Civil P. C. are fulfilled a revision from an order under the Act would lie to the High Court under that section. 1932 Oudh 210 (213) [AIR V 19] : 7 Luck 601 (FR).

thereof under or in pursuance of the provisions of this Act, such person shall, if such failure to comply is not punishable under any of the sections of this Act, be on conviction punishable with fine which may extend to one thousand rupees.

(2) A Criminal Court may, in passing an order of conviction for an offence under sub-section (1), specify the period within which the person convicted shall comply with the provisions of this Act which may be found to have been contravened by him, and may also prescribe a daily fine not exceeding Rs. 50 for every day for the period during which the default continues after the expiry of the period so specified :

Provided that, if the person failing to comply with any direction issued by such Court satisfies such Court that there is good reason for his failure to do so and applies for an extension of the period specified under this section, such Court may, if it thinks fit, extend the period and may remit the whole or any part of the fine paid or due.

**10-B. Cognizance of offences.** — (1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Court given in the prescribed manner.

(2) No Criminal Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try an offence under this Act.

**10-C. Prosecution of, and suits against, persons acting in good faith.** — No suit or prosecution or other proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

**10-D. Recovery of sums due under this Act.** — All sums due under this Act shall be recoverable as arrears of land revenue."

— Bom. Act XVIII of 1935, S. 13. [23-9-1935].

### Rules

#### 11. Power to make rules.

(1) The <sup>A</sup>[State Government] may, after previous publication, by notification in the <sup>A</sup>[Official Gazette], make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the additional particulars to be furnished by mutawallis under clause (g) of sub-section (1) of section 3 ;
- (b) the fees to be charged upon applications made to a Court under sub-section (1) of section 4 ;
- (c) the form in which the statement of accounts referred to in section 5 shall be furnished, and the particulars which shall be contained therein ;
- (d) the powers which may be exercised by auditors for the purpose of any audit referred to in section 6, and the particulars to be contained in the reports of such auditors ;
- (e) the fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9 ;

#### Section 10B (Maharashtra) — Note 1

[1] Effect of the Act and Mussalman Wakf Bombay (Amendment) Act of 1935 is that any prosecution under S. 10 of principal Act must be with sanction of District Court and must be tried by Criminal Court not inferior to Presidency Magistrate or Magistrate of First Class. An offence under S. 10 cannot, therefore, be tried by a District Court which is not a criminal Court. 1939 Bom 146 (147) [AIR V 26] : ILR (1939) Bom 336.

[2] The scheme of the Act after the addition of S. 10B to it by the Bombay Act 18 of 1935 is that offences under the Act are ordinary criminal proceedings to be tried by the ordinary criminal Courts subject however to the provisos that sanction for prosecution must have been given by a Court in the manner prescribed and that no Criminal Court of the

second or third class Magistrate shall be competent to try the offence. 1938 Sind 149 (149, 150) [AIR V 25] : ILR (1939) Kar 82 : 39 Cri L Jour 805 (DB).

[3] Where a person is called upon to deliver accounts under S. 3 and fails to do so, and the Court holding that the person fell within the terms of the Act, directs that the papers be sent to the Public Prosecutor in order that he might take the appropriate action against the person, R. 26, Mussalman Wakf Rules, 1936, prescribing manner of giving sanction under S. 10-B is sufficiently complied with though it would be better to give formal sanction independently of the judgment in the case under S. 3. 1941 Bom 152 (153) [AIR V 28] : ILR (1941) Bom 328 : 42 Cri L Jour 517 (DB).

- (f) the safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act; and
- (g) any other matter which is to be or may be prescribed.

## STATE AMENDMENT

## MAHARASHTRA

In its application to Bombay area of the State of Maharashtra,—

(1) In sub-section (2) of section 11—

- (a) in clause (a) after the word and figure "section 3", the words and figures "or under section 6A or section 6C", shall be *inserted*;
- (b) for clause (b) the following shall be *substituted*, namely:—  
 "(b) the manner in which notice to be published under section 4 and the fees to be charged upon application made to the Court under sub-section (1) of section 4 or under section 6A or section 6B or section 6C,"
- (c) in clause (c) after the word and figure "section 5", the words and figures "or section 6B or section 6C" shall be *inserted*;
- (d) in clause (d) after the word and figure "section 6", the words and figures "or section 6H or section 6I" shall be *inserted*;
- (e) in clause (e), after the brackets and letter "(c)" the words "the manner of inspection and" shall be *inserted*;
- (f) after clause (f), the following shall be *inserted*, namely:—  
 "(f1) the manner in which subject to the provisions of section 9A an inquiry shall be held by the Court and the Wakf Committee under section 6C or 6M and the manner in which the parties shall be represented in such inquiry and the costs of such inquiry shall be borne,
- (f2) the manner in which the Register of Wakfs shall be prepared and maintained under section 6D,
- (f3) the form in which a change in any of the particulars recorded in the Register of Wakfs shall be reported and the amount of fee to accompany such report and the manner in which the inquiry shall be held and the entries in the Register of Wakfs shall be amended under section 6E,
- (f4) the form in which the accounts shall be prepared, kept and furnished, the particulars to be entered thereon, and the manner in which, and interval at which such accounts shall be audited under section 6H,
- (f5) the amount of contribution, and the date on which, and the manner in which it shall be paid and exemptions granted under section 6-I,
- (f6) the appointment and remuneration of auditors appointed under the Act,
- (f7) the management, custody, investment and disbursement of the Wakf Administration Fund,
- (f8) the purpose for which a Wakf Administration Fund shall be applied under section 6K,
- (f9) the number of members who shall constitute a Wakf Committee, the period of office of a Wakf Committee and the manner in which such committee shall hold its meetings and the procedure to be followed at their meetings,
- (f10) the manner in which the inspection of the property, records and accounts of a Wakf shall be carried out, the sum which shall be paid in respect of the costs of the members of the Wakf Committee undertaking such inspection, the terms and conditions on which persons shall be employed and the remuneration which shall be paid to such persons, under section 6-O,
- (f11) the qualifications of an accountant appointed under section 6-P,
- (f12) the form in which a list of Wakfs shall be published under section 6-Q."

(2) After sub-section (2) of section 11, the following new sub-section shall be *added*, namely:—

"(3) Rules made under this section shall be laid before each of the Chambers of the State Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both the Chambers concur and such rule shall after notification in the Official Gazette be deemed to have been modified or rescinded accordingly :

Provided that when in the opinion of the State Government such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the State Government may by notification in the Official Gazette declare that the modification or rescission shall have no effect and thereupon the rules shall remain in force as if they had not been modified or rescinded."

—Bom. Act XVIII of 1935, S. 14. [23-9-1935].

## 12. Savings.

Nothing in this Act shall—

- (a) affect any other enactment for the time being in force in the "[territories

to which this Act applies] providing for the control or supervision of religious or charitable endowments; or

(b) apply in the case of any wakf the property of which—

- (i) is being administered by the Treasurer of Charitable Endowments, the Administrator General, or the Official Trustee, or
- (ii) is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment,

[a] *Substituted* for "Provinces", by A. L. O., 1950.

### 13. Exemption.

The <sup>A</sup>[State Government] may, by notification in the <sup>A</sup>[Official Gazette], exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community.

## [THE] MUSSALMAN WAKF VALIDATING ACT, 1913

(ACT VI of 1913)

[The Act printed here is as on 15-9-1960.]

### CONTENTS

#### SECTIONS

- 1. Short title and extent.
- 2. Definitions.
- 3. Power of Mussalmans to create certain wakfs.

4. Wakfs not to be invalid by reason of remoteness of benefit to poor, etc.

5. Saving of local and sectarian custom.

#### STATEMENT OF OBJECTS AND REASONS

"The object of this Bill is to remove disability and great hardship that has been created by the recent decisions of the Privy Council in *Abul Fata Mahomad Ishak and others v. Russonoy Dhur Chowdry and others*, L R 22 Ind App 76 and other cases. The power of a Mussalman to make a settlement for or in favour of his family, children and descendants or what is known as *wakf-atal-aulad* to the Mussalman law is paralysed.

In the case above cited it was held that under Mussalman Law a perpetual family settlement expressly made as *wakf* is not legal and valid merely because there is an ultimate gift to the poor and it confirmed the decision in *Ashanulla Chowdry v. Amarchand Kundu*, reported in L R 17 Ind App 28 the principle of which was approved in a subsequent case of *Abdul Gafur v. Nizamuddin* L R 19 Ind App 170, where it was laid down that a gift is not

good as *wakf* unless there is a substantial dedication of the property to charitable uses at some period of time or other.

The decision does not fix any limit of time, it simply says "some period of time or other". It does not define what is "substantial dedication". Thus it introduces the greatest uncertainty in the law and is generally opposed to the true principles and correct exposition of the Mussalman jurisprudence. This Bill is intended only to reproduce the Mussalman law of *wakf-atal-aulad* in a codified form with certain safeguards for the authenticity of the *wakfnama* and for prevention of fraud upon creditors or otherwise.

It is not intended to codify or define the general Law of *wakf* which must be governed by the Mussalman Law....."

—Gaz. of Ind., 1911, Part V, page 107.

#### EXTRACT FROM SELECT COMMITTEE REPORT

"We have restricted the provisions of the Bill so as to confine it to a measure specifically declaring the rights of Mussalmans to create *wakfs* of the character referred to in clause 3.

The clauses which deal with the manner in which *wakfs* may be created and with the registration of deeds creating *wakfs* have been omitted as they make important changes in the personal law governing Mussalmans and the avowed object of the Bill is not to make any change in this law but to restore it to the

position which it is believed by many competent authorities to have occupied prior to the decisions of the Privy Council referred to in the Statement of Objects and Reasons. The omissions of these clauses has made it possible to omit many of the definitions and to shorten the Bill considerably.

We have added a clause to make it clear that no *wakf* is to be deemed to be invalid merely because the ultimate dedication to the poor or other charitable object of a permanent



nature is postponed until after the extinction of the family of the person creating the wakf. We have further provided that nothing in the

Bill shall affect any sectarian or local custom or usage".

—Gaz. of Ind., 1913, Part V, page 39.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Adapted by 2 A. L. O., 1956.
- Extended by Acts LIX of 1949; XXX of 1950.
- Extended in Bombay by Bom. Act IV of 1950.
- Extended in Madhya Pradesh by M. P. Act XII of 1950.
- Extended in Madras by Mad. Act XXIII of 1950.

- Adopted in Madhya Bharat by M. B. Act I of 1953.
- Repealed in its application to Delhi by Act XIII of 1943.
- Made to operate retrospectively by Act XXXII of 1930.

## [THE] MUSSALMAN WAKF VALIDATING ACT, 1913 (ACT VI OF 1913)<sup>a</sup>

[7th March, 1913.]

*An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants.*

WHEREAS doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves, their families, children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable purposes; and whereas it is expedient to remove such doubts; It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gazette of India, 1911, Pt. V, p. 107; for Report of Select Committee, see *ibid.*, 1913, Pt. V, p. 59.

This Act has been declared to be in force in the Southal Parganas by Notification under S. 3 of the Southal Parganas Settlement Regulation (III of 1872), see Bihar and Orissa Gazette, 1914, Pt. II, p. 413. It has been applied to wakfs created before its commencement, see the Mussalman Wakf Validating Act, 1930 (XXXII of 1930), S. 2.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 (1-1-1950) and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 (16-4-1950).

It has also been extended to the States Merged in the State of—  
Bombay, by Bom. Act IV of 1950, S. 3 (3-4-1950);

Madhya Pradesh, by M. P. Act XII of 1950, S. 3 (3-4-1950);

This Act is extended to the transferred territories in the State of Madras by Mad. Act XXIII of 1950, S. 3 and Sch. I.

It has been adopted *mutatis mutandis* in the State of Madhya Bharat, by M. B. Adoption of Laws Act 1953 (I of 1953), S. 2 and Sch. (24-1-1953).

The Act shall not apply to any wakf to which Delhi Muslim Wakfs Act, 1943 (XIII of 1943), applies.

### 1. Short title and extent.

(1) This Act may be called THE MUSSALMAN WAKF VALIDATING ACT, 1913.

(2) It extends to the whole of India except \*[the territories which, immediately before the 1st November, 1956, were comprised in Part B States].

[a] Substituted for "Part B States", by 2 A. L. O., 1956. Immediately before the 1st November, 1956, the following were the Part B States in India :—Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin.

#### Preamble — Note 1

[1] The intention of the Act was not to restore the pure Muslim Law as understood in Arabia but was to make an amendment of the Anglo Muslim Law on the point. 1947 Lah 117 (133) [AIR V 34 C 25] : 1 L R (1946) Lah 300. (The Court has to interpret the language as it stands and should not be influenced by authorities prior to the Act which may have led to the enactment.)

[2] Act validates wakfs alal aulads which had been declared invalid by Privy Council

in series of cases. 1942 Cal 180 (108) [A I R V 29] (DB) + 1958 Mys 28 (30) [AIR V 45 C 8] : ILR (1957) Mys 130 (DB).

[3] True intention and object of legislature in passing Act was merely to do away with effects of decision which said that bequests for charity should not be illusory or unsubstantial. 1928 Mad 1110 (1115) [AIR V 13] + 1955 Pat 270 (276) [(5) AIR V 42 C 86] : 54 Pat 133 (DB).

[4] The Act merely defines what is valid wakf. It does not purport to deal with validity

## 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

- (1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.
- (2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

## 3. Power of Mussalmans to create certain wakfs.

It shall be lawful for any person professing the Mussalman faith to create a

### Preamble — Note 1 (*contd.*)

or otherwise of wakfs the objects of which are indefinite or uncertain. 1931 Sind 75 (77) [AIR V 18] : 25 Sind L R 415 (DB).

[5] Principles of Muhammadan Law are not excluded from application to wakf created under Act. 1935 Lah 626 (627) [A I R V 22] : 16 Lah 432 (DB).

[6] In the case of wakf governed by this Act the Court has jurisdiction under the Muhammadan law to permit the Mutwalli to deal with the property in certain circumstances. But the form of action by which such permission is to be sought is by way of suit and not an application. There is no provision either in this Act or any other enactment under which an application can be maintained for the purpose. 1944 Sind 183 (183, 184) [AIR V 31] : ILR (1944) Kar 69.

[7] The Act as it was originally enacted was not retrospective in its operation but it solely referred to wakfs created after the Act. 1938 Oudh 69 (76) [AIR V 25] : 13 Luck 723 (DB).

[See 1920 Cal 588 (592) [A I R V 7] (DB) \* 1927 P C 191 (192, 193) [A I R V 14] : 54 Ind App 372 : 9 Lah 203. (Validity of wakf created before Act, test still is, "was there substantial dedication to charitable purposes". Since passing of Act this test is not however applied too strictly to wakf created before Act.)+1918 All 2 (8) [AIR V 5] : 41 All 1 (DB)+1927 Bom 387 (389) [A I R V 14] + 1921 Bom 338 (346) [AIR V 8]+1914 Bom 109 (110) [AIR V 1] : 39 Bom 563+1928 Cal 130 (132) [A I R V 15] : 55 Cal 448 (DB) + 1916 Cal 425 (426) [AIR V 3] : 43 Cal 158 (DB)+1915 Cal 424 (425) [AIR V 2] +1919 Oudh 113 (113) [AIR V 6]+1929 Sind 52 (54) [AIR V 16] : 23 Sind L R 207].

[8] The Act was made retrospective only by the subsequent Act of 1930 and even then only if right, title, obligation or liability already existing was not affected. 1938 Oudh 69 (76) [AIR V 25] : 13 Luck 723 (DB).

[9] Wakfs described under Act are not included in Musalman Wakf Act 42 of 1923. 1930 Oudh 509 (510) [AIR V 17] (DB). + 1929 Oudh 225 (228) [AIR V 16] : 4 Luck 429 (FB).

[10] Act covers private trusts only. ('45) 11 B R 293 (294).

### Section 2 — Note 1

[1] Definition of "wakf" as given in the Act is not necessarily exhaustive. 1927 P C 22 (22) [AIR V 14] : 54 Ind App 23 : 5 Rang 7.

[2] Act does not deal with validity or otherwise of wakfs for objects which are indefinite and uncertain but declares that certain wakfs

for maintenance and support of wakf, his family and descendants, shall, under certain circumstances, be treated as valid. 1929 Sind 52 (55) [AIR V 16] : 23 Sind L R 207.

[3] Wakf can be made of movable as well as immovable property and in fact "of any property" provided the conditions of the Act as to purpose and ultimate benefit are satisfied. 1936 All 15 (16) [AIR V 23] : 58 All 464 (DB). (Grove-holder's right can be subject-matter of wakf.)+1944 Mad 504 (509) [AIR V 31] : ILR (1945) Mad 276 (DB).

[4] The definition of 'wakf' does not require that there should be an express transfer of the corpus of the property to God. From the fact that a wakf has been created for the purposes which are considered by the Mohammedan Law to be religious and charitable it is implied that the wakf has transferred the ownership of wakf property in perpetuity to God Almighty. 1957 All 94 (100) [AIR V 44 C 23] : ILR (1954) 2 All 556 (DB).

[5] The test of a valid object of a wakf is not the benefit to the public as it is under the English law of charitable trusts. Pious acts recognised among the Mussalmans as being for the good of the soul of the settlor or his ancestors have been upheld as valid objects. 1947 Mad 176 (180) [AIR V 34 C 92] : ILR (1947) Mad 480 (DB).

[6] The mere use of the word 'wakf' in a deed, after passing of the Act, cannot necessarily imply a dedication to the poor. The ultimate object of the wakf has to be gathered from other expressions in the document. ('54) ILR (1954) 6 Assam 18 (40) + 1940 Cal 417 (421) [AIR V 27] : ILR (1940) 2 Cal 189 (DB)+1932 Oudh 71 (74) [AIR V 19] : 7 Luck 300 (DB)+1930 All 837 (839) [AIR V 17] : 52 All 748 (DB) + 1929 All 180 (186) [AIR V 16] (DB)+1926 Mad 1110 (1114) [AIR V 13].

[7] If the primary object of the wakf is aggrandizement of the family, although there may be an ultimate and remote benefit reserved for charitable and religious purposes, it would be a private wakf but if the substantial benefit is reserved for such religious or charitable objects although some minor benefit is given to the members of the family or their descendants, the wakf should be considered as a public wakf. 1958 Mys 28 (31) [AIR V 45 C:8] : ILR (1957) Mys 130 (DE).

## SECTION 3 — SYNOPSIS

1. Scope.
2. Wakfs permitted by the Act.
3. Wakf for maintenance and support.

wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes :—

- (a) for the maintenance and support wholly or partially of his family, children or descendants, and
- (b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated :

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

### Section 3 — Synopsis (contd.)

#### 4. Settlor's family.

#### 5. Wakf by Hanafi Mussalman.

#### 6. Ultimate benefit must be reserved for charitable purpose—Proviso.

1. Scope. — [1] Act does not apply to public wakfs by which the benefit is reserved immediately and not ultimately for public purpose. (45) 11 B R 293 (294).

[2] Wakf partly public and partly private—Act does not apply. 1933 Cal 581 (582) [AIR V 20] : 60 Cal 790 (DB) + 1929 All 180 (183, 184, 186) [AIR V 16] (DB) + 1943 Mad 234 (234, 235) [AIR V 30] : (Section 3 (a) of Act VI of 1913 cannot apply to wakfs which subserve two purposes partly charitable and partly private, but must apply to wakfs originally designed to serve one purpose only and that is private.) + 1929 Oudh 225 (229) [AIR V 16] : 4 Luck 429 (FB). (*Obiter.*)

[See 1940 All 462 (463) [AIR V 27] + 1944 Bom 91 (93) [AIR V 31]. (That part of wakf which does not fall under Wakf Validating Act (i. e. relating to public wakf) is governed by Wakf Act 1923.) + 1937 Oudh 454 (455, 456) [AIR V 24] : 13 Luck 446 (DB). (Such wakfs are not excluded from Act—Wakf Validating Act would apply until death of such persons—Wakf Act 1923 will subsequently apply—AIR 1929 Oudh 225 (FB), *held obiter.*) + 1930 Oudh 53 (54) [AIR V 17] (DB).]

[3] A wakfnama, though not governed by Act, being created before Act, will be valid if dominating purpose and intention of grantor was charitable purpose and secondary and subsidiary object was to secure for his daughters any surplus that might remain after defraying expenses. 1918 Cal 829 (830) [AIR V 5] (DB).

[4] Assuming that after the passing of this Act it is possible to create a wakf apart from the terms of the Act the wakf so created can be considered to be valid only if the properties are given substantially to the charitable uses. If the effect of it on the other hand is to give them in substance to the wakf's family then it is invalid under the Muhammadan law. 1940 All 462 (463) [AIR V 27].

[5] There is no provision in Act which would enable the Court to entertain an application by the sole mutwalli asking for leave to sell property to wakf, falling within S. 3 of the Act. 1944 Sind 183 (183, 184) [AIR V 31] : ILR (1944) Kar 69.

[6] The Mutwalli of a wakf created under

the Act is not a trustee inasmuch as the ownership of the property does not vest in him. He merely acts as a manager of the property. The property is transferred to the God and vests in him alone. 1951 All 512 (512) [AIR V 38 C 120] (DB) + 1958 All 38 (39) [AIR V 45 C 15] (DB).

2. Wakfs permitted by the Act. — [1] A usufructuary mortgage being not valid under the Muhammadan law the mortgagee cannot constitute a valid wakf in respect of his rights under such a mortgage. The wakf even though it may be valid under the provisions of this Act must fail on the ground that it is property which the wakf's religion considers unlawful to acquire. 1936 Oudh 213 (218, 219) [AIR V 23] : 11 Luck 735 (FB).

[2] The words "in all other respects" mean "which otherwise satisfies the conditions of valid wakf under Mussalman Law" — It does not include law of inheritance — Wakf not in accordance with Muhammad Law of inheritance — Wakf is not invalid. 1944 Pat 234 (241) [AIR V 31] : 23 Pat 203 (DB) + 1938 Lah 453 (453) [AIR V 25] : 11 L R (1938) Lah 435 (DB).

[3] One object good and one bad — Whole income can be devoted to good object. 1944 Mad 504 (511) [AIR V 31] : ILR (1945) Mad 276 (DB) + 1932 Oudh 71 (75) [AIR V 19] : 7 Luck 300 (DB).

[4] Where the bequest is for purposes one of which is charitable and the other merely benevolent and discretion is left to the trustee to spend the income on either object as he pleases, the whole bequest is bad for uncertainty. 1947 Lah 117 (131) [AIR V 34 C 25] : ILR (1946) Lah 300 (DB).

[5] The words "among other purposes" suggest that wakf can be made for purposes other than those described in S. 3. 1941 Oudh 492 (493) [AIR V 28] : 16 Luck 769 (DB). (Wakf in favour of servants is valid.) + 1944 Mad 504 (509) [AIR V 31] : ILR (1945) Mad 276 (DB).

[6] Existence of mortgage in property dedicated for wakf and making of provision for its discharge out of its rents and profits, would not invalidate wakf. 1922 Cal 429 (431) [AIR V 9] : 49 Cal 477 (DB).

[7] Intention to comply with Act—Liberal interpretation favouring validity should be adopted of wakf deed. 1947 Lah 117 (134) [AIR V 34 C 25] : ILR (1946) Lah 300 (DB).

#### 3. Wakf for maintenance and support.—

[1] Wakf in favour of the members of settlor's

**Section 3 — Note 3 (contd.)**

family is not invalid under provisions of S. 3. (1932) 138 Ind Cas 616 (617) (DB) (All).

[2] Main object of wakf, under the Act, need not be to devote property to what are charitable purposes under Mussalman Law. Main object may be to make settlement on settlor's family. 1927 P C 191 (192) [AIR V 14] : 54 Ind App 372 : 9 Lah 203\* 1960 Mad 318 (319, 320) [AIR V 47 C 105] : 1 L R (1960) Mad 481. (Main purpose of wakf to provide for maintenance and support of Wakif's daughter and her descendants — Five Rupees per year reserved for performance of fatia and feeding of fakirs on Prophet's birthday — No express reservation of ultimate benefit in favour of religious object — It may be implied—Wakf is valid—Non-performance of charity does not invalidate it.)

[3] The Act makes it lawful for a Mussalman to tie up his property in perpetuity for the maintenance and support of his family, children or descendants provided he makes a provision that the ultimate benefit goes to a charitable object recognised by the Mahomedan Law as charitable and the charitable object is of a permanent nature. Where there is gift to charity in praesenti, the provision that trustees should not spend on charity so long as settlor is alive does not make the wakf invalid. But whole of trust property must be given to charity as ultimate bequest and not a small portion of it. 1946 Bom 342 (344) [AIR V 33 C 74]\* 1947 Mad 176 (179) [AIR V 34 C 92] : ILR (1947) Mad 480 (DB).

[4] Where the material portions of a valid private wakf deed show clearly that the income of the wakf, apart from some minor expenses, was intended for the maintenance first of the founder, his wife and two younger daughters and then of his two cousins and their descendants with a further clause to the effect that if the cousins become heirless, the property will be used for other pious or charitable purposes, it was held that the two cousins, the widow and the two daughters of the founder are beneficiaries under the wakf deed and the income of the wakf property in the hands of the Mutwallis is 'income' received by them on behalf of these beneficiaries. 1958 Orissa 143 (145) [AIR V 45 C 37] (DB).

[5] The fact that the bulk of the income is reserved for the wakif and his descendants and they have not been given only just enough for their maintenance and support does not render the wakf one which is not for maintenance and support. 1952 All 127 (129) [AIR V 39] : ILR (1952) 2 All 806 (DB). (Reservation of the whole income for maintenance and support does not amount to creating successive life estates because the property immediately vests in God.)\* 1957 All 94 (101) [AIR V 44 C 23] : ILR (1954) 2 All 556 (DB). (The fact that the deed recites that the wakif is reserving the whole of the income for the 'use' of himself and his descendants and does not state that the income is secured for his maintenance and support does not amount to creating any life interests.)

[6] Wakf in favour of utter strangers is

invalid. 1942 Bom 155 (158) [AIR V 29] : ILR (1942) Bom 441.

[7] Agarab cannot be beneficiaries under wakf. 1947 Lah 117 (134) [AIR V 34 C 25] : ILR (1946) Lah 300 (DB).

[8] Merely because beneficiary cannot take benefit under wakf by his not being a member of family, whole wakf is not invalidated. 1935 Lah 414 (415) [AIR V 22] (DB).

[9] Giving of benefit to kindred transgressing limits of Act—Interest of kindred as beneficiary can be cut and interest of charity, next beneficiary, accelerated. 1947 Lah 117 (135, 137) [AIR V 34 C 25] : ILR (1946) Lah 300 (DB).

[10] The word 'maintenance' is generally intended to mean lodging, boarding, clothing and other such necessities of life. The word 'support' appears to amplify the meaning of the word 'maintenance' and might include expenses not only for the necessities of life but also for all conveniences. 1952 All 127 (129) [AIR V 39] : ILR (1952) 2 All 806 (DB).

[11] Wakf by Cutchi Memon by will in 1934—After bequeathing movable property to various members of family and making provision for maintenance of his grand-children testator creating wakf of residue of his properties—Residue held could be ascertained—Dedication held not contingent—Wakf held not invalid on ground of uncertainty. 1944 Mad 504 (509) [AIR V 31] : ILR (1945) Mad 276 (DB).

**4. Settlor's family.**—[1] In order to come within the purview of the Act, every person benefited by the wakf, however remote in time from the settlor himself, must be in a position to trace his descent from a progenitor common to himself and the settlor. 1942 Bom 155 (157) [AIR V 29] : ILR (1942) Bom 441.

[2] Word "family" would include (1) all those persons residing in same house as settlor and dependent upon him for maintenance and (2) all those connected with settlor through common progenitor or by ties of common lineage. Therefore disposition in favour of sister's son residing with settlor is good and valid one. 1942 Bom 155 (157) [AIR V 29] : ILR (1942) Bom 441\* 1940 All 383 (383) [AIR V 27]\* 1928 All 516 (521) [AIR V 15] : 51 All 40 (DB). (Daughter-in-law living with settlor is member of family.)\* 1930 All 169 (175) [AIR V 17] : 52 All 368 (DB). (Do.)

[3] Family includes both agnates and cognates. 1957 Mad 583 (587) [AIR V 44 C 171, (DB)].

[4] Family is not restricted to members living with and dependent on wakif — Son of half-brother, father's brother's son and half-sister are members of wakif's family. 1929 Oudh 25 (26) [AIR V 16] : 4 Luck 101 (DB).

[5] "Family" includes brother and his descendants. 1935 Lah 251 (265) [AIR V 22] : 16 Lah 782 (DB).

[6] 'Family' would include deceased brother's widow and his children and provision in wakf for their maintenance is valid. 1929 Lah 721 (727) [AIR V 16] (DB).

[7] Family includes nephews of settlor irrespective of whether they live in settlor's

**Section 3 — Note 4 (contd.)**

house or whether settlor is responsible for their maintenance. 1947 All 137 (138) [AIR V 34 C 64] : I L R (1946) All 575 (DB).

[8] Person adopted by wakf and residing with him comes within definition of 'family'. 1935 Lah 414 (415) [AIR V 22] (DB).

[9] Wakf *niak-aulad* reserving ultimate benefit to poor or for religious, pious or charitable purposes is valid — Word 'family' does not include any and every relation by blood or marriage. 1947 All 281 (284) [AIR V 34 C 113].

[10] Family includes only those persons for whose maintenance settlor is responsible. Distant collaterals and their descendants do not belong to family. 1925 Oudh 301 (303) [AIR V 12] + 1947 Lah 117 (134) [AIR V 34 C 25] : I L R (1946) Lah 300 (DB).

[11] 'Family', children, and descendants do not mean family, etc., as class. Wakf may be validly created in favour of certain members of family to exclusion of others, if other conditions of S. 3 are satisfied. 1930 Sind 318 (319) [AIR V 17] : 25 Sind L R 39 (DB) + 1938 Lah 453 (453) [AIR V 25] : I L R (1938) Lah 435 (DB).

**5. Wakf by Hanafi Mussalman. —**

[1] Hanafi Mussalman can create wakf for his own maintenance during his life provided ultimate benefit is reserved for charitable purpose. 1927 Oudh 162 (169) [AIR V 14] (DB).

[2] Wakf by Hanafi Muhammadan providing that his debts be paid out of rents and profits of wakf property is valid. 1934 All 178 (179) [AIR V 21] : 56 All 293 (DB) + (57) 1957 Ker L T 849 (852).

[3] Settlor can under the Hanafi law reserve for his own maintenance and support during his life-time the income of the trust property. The Act, however, does not permit him to reserve the income of the trust property during his life for his own benefit and for such use as he may put it to. 1949 Bom 342 (345) [AIR V 33 C 74].

[But see 1957 All 94 (101) [AIR V 44 C 23] : I L R (1954) 2 All 556 (DB).]

[4] Section 3 (b) of the Act applies to Sunnis but not to Shi'as. Whether the settlor who originally was a Sunni, had ceased to be a Sunni, and had become a Shia before the making of the wakf *nama*, which is expressed as made under the Act is a question of fact. 1946 P C 177 (177) [AIR V 33 C 51] : I L R (1945) Kar (PC) 161.

[5] Life interest reserved to Shia Muhammadan settlor—Wakf is void. 1943 Bom 366 (367) [AIR V 30] : I L R (1943) Bom 495 (DB).

**6. Ultimate benefit must be reserved for charitable purpose—Proviso.—**[1] Where "ultimate benefit of subject-matter is not expressly or impliedly reserved for the poor, etc.," no valid wakf is created under Act. (35) 13 Rang 679 (683) (DB). (Donor purporting to convey property to trustee—Donor to remain in possession during life time as sole trustee of trust fund—No ultimate reservation for poor, etc.—There is no valid wakf.)

+ 1926 All 378 (379) [AIR V 13] (DB). (Inference of intention for ultimate charity cannot be drawn where there is express intention to be otherwise) + 1940 Cal 501 (503) [AIR V 27] : I L R (1940) 2 Cal 464 (DB) + 1933 Cal 716 (717, 718) [AIR V 20] : 60 Cal 901 (DB). (Such gift might be implied — 141<sup>st</sup> of income for maintenance without mention of ultimate gift to charity on failure of descendants—Wakf is invalid) + 1922 Cal 429 (431) [AIR V 9] : 49 Cal 477 (DB) + 1935 Lah 251 (264) [AIR V 22] : 16 Lah 782 (DB). (Mere provision regarding residence of descendants of family did not invalidate wakf) + 1928 Mad 1110 (1113) [AIR V 13] (Proviso to S. 3 covers both clauses (a) and (b) of S. 3) + 1928 Nag 10 (14) [AIR V 15] (DB) + 1932 Oudh 71 (75) [AIR V 19] : 7 Luck 300 (DB). (Profits of wakf property can be spent for maintenance of mutawallis and their children.) + 1931 Oudh 133 (133) [AIR V 18] : 6 Luck 382. (Where there is no direction for ultimate benefit to charities, there is no valid wakf, though properties are placed in possession of mutawallis.) + 1925 Oudh 301 (303) [AIR V 12] (DB). (No ultimate reservation—Wakf fails.) + (36) 165 Ind Cas 515 (516) (DB) (Pesh) + 1950 All 837 (840) [AIR V 17] : 52 All 748 (DB). (Ultimate object of wakf to accumulate property—Public not given any right—Dedication not valid.)

[2] Ultimate gift to charity might be implied. 1933 Cal 716 (717, 718) [AIR V 20] : 60 Cal 901 (DB) + 1957 All 94 (100) [AIR V 44 C 23] : I L R (1954) 2 All 556 (DB) + 1948 All 11 (12) [AIR V 35 C 4] + 1947 All 137 (138, 139) [AIR V 34 C 64] : I L R (1946) All 575 (DB) + 1935 All 616 (618, 619) [AIR V 22] (DB) + 1930 All 837 (840) [AIR V 17] : 52 All 748 (DB) + 1929 All 180 (183, 184, 186) [AIR V 16] (DB). (Intention to benefit exclusively family — Public having no right to control—Ultimate benefit to poor cannot be implied.) + 1940 Cal 417 (421) [AIR V 27] : I L R (1940) 2 Cal 189 (DB). (Such intention cannot be inferred from mere use of word 'wakf' in deed.) + 1926 Mad 1110 (1114) [AIR V 13] + 1932 Oudh 71 (75) [AIR V 19] : 7 Luck 300 (DB). (Word 'wakf' should not only satisfy definition in S. 2 but also satisfy proviso to S. 3—Mere use of word is not enough.)

[3] The ultimate gift to religious charities must be implied from the terms of the document and is not to be implied from the mere fact that the settlor was purporting to make a wakf. (57) 1957 Ker L T 849 (854) + (54) I L R (1954) 6 Assam 18 (41). (In case of vague disposition to Almighty for pious or religious purposes, the doctrine of cy pres cannot be brought into operation to validate a gift.) + 1952 All 127 (130) [AIR V 39] : I L R (1952) 2 All 806 (DB). (Income dedicated to kar-kher—Kar-kher although would include a charitable religious or pious object means not merely charity but any good work—Wakf must be struck down as void for uncertainty.) + 1938 All 404 (406) [AIR V 23] (DB) + 1932 Cal 93 (98, 103) [AIR V 19] : 59 Cal 402 (DB). (Effect rather than language must be construed. The settlor or his heirs can show that dedication was unreal or fictitious.)

**Section 3 — Note 6 (contd.)**

[4] A gift to charity of three shares out of fifty in a wakfnama is not such a substantial part of the property as would render the deed valid under the Mahomedan Law before the passing of the Mussalman Wakf Validating Act, 1913. Where however there is a clear overriding charitable intention expressed in the preamble, which would absorb any beneficial interests in the usufruct not expressly covered by the deed and there is a provision that on the extinction of the lines of the three children who are to take the beneficial interests in the usufruct from generation to generation, the shares will be applicable in charity in accordance with the general charitable intent, the wakf must be held to be valid. 1948 P C 168 (173, 174) [AIR V 35 C 45] : Pak L R (1949) Lah 1.

[5] In the absence of any contrary indications the use of the term 'wakf' by the settlor may by itself be taken to imply an ultimate dedication for the poor or other unfailing charitable object. There is nothing in the Act to exclude such implication. 1947 Mad 176 (182) [AIR V 34 C 92] : ILR (1947) Mad 480 (DB).

[6] The specification of the particular religious and charitable objects for which the ultimate benefit is to be reserved is not necessary to constitute a valid wakf. Where an overriding intention to charity is clear the pious objects can be implied. 1941 All 235 (241, 242) [AIR V 28] : ILR (1941) All 443 (DB) \* 1942 Cal 180 (199) [AIR V 29] (DB). (Waqf alal aulad by Shia—Overriding intention to charity—Cy pres applies—Wakf is good.) \* 1947 Lah 117 (130) [AIR V 34 C 25] : ILR (1946) Lah 300 (DB). (General overriding trust for charitable purposes—Pious objects can be implied.)

[But see 1935 Lah 596 (597) [AIR V 22] (DB) \* 1940 Oudh 324 (331, 332) [AIR V 27] : 15 Luck 586 (FB). (Wakf describing ultimate object of benefit as 'charitable purposes highly commendable according to Hanafi School' is not valid for vagueness unless wakf specifies particular object recognised by Mohammadan Law as religious, pious and charitable and is of permanent character.)]

[7] When the settlor creates a "wakf" partly for the maintenance and support of his family and children and partly for a specified charitable purpose such as, for instance, the support of a mosque, an ultimate reversion of the fund bestowed on the family could well be inferred in favour of such charity; for where a settlor has indicated a preference for a specific religious or charitable purpose of a permanent character by making a concurrent gift for it or otherwise, the condition of perpetuity can be fulfilled by implying an ultimate reservation in favour of such object, and it would not be necessary in such a case to bring in the poor. 1947 Mad 176 (182) [AIR V 34 C 92] : ILR (1947) Mad 480 (DB).

[8] The words 'of a permanent character' in the proviso must be regarded as indicating only those general purposes which are called

religious, pious or charitable under all systems of Mahomedan Law. A gift for the maintenance of one's children, family or descendants cannot by any means be regarded as permanent. 1926 Mad 1110 (1115) [AIR V 13].

[9] If ultimate gift is for charity, paltriness of income set apart for such purpose is immaterial. 1929 All 180 (183) [AIR V 16] (DB) \* 1947 Mad 176 (179) [AIR V 34 C 92] : ILR (1947) Mad 480 (DB) \* 1932 Oudh 71 (75) [AIR V 19] : 7 Luck 300 (DB). (Fact that major portion is to be spent for maintenance of mutawallis and their children does not invalidate wakf.) \* 1944 Pat 234 (241) [AIR V 31] : 23 Pat 203 (DB). (Two annas share of nett income of wakf estate to be spent for religious and charitable purposes. 13 annas share for maintenance of donor's family and their descendants of both male and female line and for charitable purpose as regards the remaining one anna to be treated as part of wakf property. Wakfnama did not offend against Act.)

[10] The Act makes the validity of a wakf dependent upon the ultimate benefit going to a public object and therefore it is necessary that malversation of the property resulting in prejudice to the ultimate public wakf by the intermediate beneficiary qua mutawallis should be prevented by their removal. 1930 Sind 315 (322) [AIR V 17] : 25 Sind L R 39 (DB). (Therefore the removal of a mutawalli is in no way dependent on his not being a beneficiary but must be considered on independent grounds.)

*"Religious, pious or charitable purpose."*

[11] In the context of Mussalman Wakfs "religious, pious or charitable purposes" in the section refer only to the purposes recognised as such by the Muhammadan Law. 1947 Mad 176 (180) [AIR V 34 C 92] : ILR (1947) Mad 480 (DB) \* 1935 Mad 29 (31) [AIR V 22] : 58 Mad 204 (DB). (The expression "or charitable" does not provide an alternative to the words "religious, pious".)

[12] Benefits to poor and other purposes mentioned in the proviso are those regarded as charitable by general Muhammadan law apart from the usages of any particular sects. 1926 Mad 1110 (1114) [AIR V 13].

[13] Performance of fateha ceremonies is religious and charitable object within meaning of proviso to S. 3, and, therefore, the dedication of property for performance of fateha is valid. 1940 All 383 (384) [AIR V 27].

[14] Dedication merely for purposes of reciting Kuran over a tomb of a private person does not constitute a dedication for a "religious, pious or charitable purpose" within the meaning of that expression in the section. 1935 Mad 29 (31) [AIR V 22] : 58 Mad 204 (DB).

[15] Maintenance and support of family etc., of wakif does not come within phrase "other purpose recognized by Mussalman law as pious". 1940 Cal 501 (505) [AIR V 27] : ILR (1940) 2 Cal 464 (DB).

**4. Wakfs not to be invalid by reason of remoteness of benefit to poor, etc.**

No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

**5. Saving of local and sectarian custom.**

Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.

**[THE] MUSSALMAN WAKF VALIDATING ACT, 1930**

(ACT XXXII of 1930)

[The Act printed here is as on 15-9-1960.]

**STATEMENT OF OBJECTS AND REASONS**

"Muhammadan Law permits a perpetual bequest in the form of *wakf-a-aulad*, that is a bequest for the benefit of the testator's descendants. As such, it contravenes the law against perpetuities as enacted in section 14 of the Transfer of Property Act, and, section 114 of the Indian Succession Act. A doubt was cast on this doctrine by the Privy Council in several cases in which their Lordships held such bequests illegal as abnoxious to the rule against perpetuities (*Abul Fata v. Kasamaya*, 22 C 619 (PC); *Abul Gafur v. Nazamuddin*, L R 19 Ind App 170; *Mujibun-nissa v. Abdul Rahim*, 23 A 233 (PC); *Muhammad Munawar Ali v. Bazza Ibra*, 27 A 320 (PC)). Mr. Jinnah introduced a Bill which became Act VI of 1913 restoring the validity of such *wakfs*.

But in several cases since decided this Act is held to be inapplicable to wakfs created be-

fore its enactment (*Khajeh Solihman v. Salimullah*, 49 C 820 (PC); *Rahumunissa v. Shakh Manah Jan*, 19 C W N 76; *Mahomed Buhht v. Dewan Ajman Raja*, 43 C 158; *Amruba v. Azizabibi*, 59 B 565).

As Act VI of 1913 was merely declaratory of the validity of such wakfs, it was understood that it would apply equally to all wakfs whether created before or since that enactment. But as the Courts have held otherwise, this Bill is framed to give that Act retrospective operation.

It is apprehended that Mussalman Wakf Validating Act (VI of 1913) was not intended to introduce a change in the old law being enacted to restore the old rule. This Bill will, if passed, carry out its intention by resolving a doubt resulting from recent cases."

—Gazette of India, 1929, Part V, page 240.

**EXTRACT FROM SELECT COMMITTEE REPORT**

"*Clause 1.*—This Bill is designed to give retrospective effect to the Mussalman Wakf Validating Act, 1913, which has already been in operation without retrospective effect for seventeen years. We have decided that the retrospective effect shall not disturb titles which have already vested, either prior to 1913, or between 1913-1930. It follows that two distinct provisions are required, one to give the desired retrospective effect, and the other to save rights which have accrued prior to 1930. We have found it impossible to fit both these provisions into the Act of 1913, and we have accordingly reshaped this Bill not as an amending Bill, but as a distinct Bill to give retrospective effect to the Act of 1913, and have given it the short title of the Mussalman

Wakf Validating Act, 1930. We have accordingly amended the long title and preamble.

"*Clause 2.*—We have not been able to accept the substance of this clause without modification, as its effect would have been to disturb titles which had already been acquired in good faith, on the understanding that wakfs of the class contemplated in the Act of 1913 were not valid if created before 1913. We adhere to the sound principle that retrospective legislation should, as far as possible, save vested rights, and we have introduced a proviso to this effect. Otherwise, the clause as amended by us merely declares that the Act of 1913 shall apply to wakfs created before its commencement."

—Gazette of India, 1930, Part V, page 107.

**Section 4 — Note 1**

[1] The Act authorises or sanctions a postponement of the ultimate gift to charity which would not have been valid under the general law. It does not, however, abrogate the rule of contingency under the Muhammadan Law. 1958 Cal 413 (413) [AIR V 45 C 100] (DB).

[2] Ultimate gift to poor and charitable purposes to take effect on extinction of heirs of wakif how low so ever is too remote and hence invalid. 1940 Cal 501 (505) [AIR V 27] : ILR (1940) 2 Cal 464 (DB) + 1954 Cal 524 (525)

[AIR V 41 C 177]. (The postponement not only till after the descendants of male line but also after the daughter's line must be rejected.)

[3] Shia wakf—On extinction of line of wakif's children half share reserved for their benefit shall be spent on "proper acts of charity" and other part shall go to reserve fund established for improvement and extension of wakf—Gift to charity is not remote and illusory. 1942 Cal 180 (195) [AIR V 29] (DB) + 1935 Lah 251 (264) [AIR V 22] : 16 Lah 782 (DB).



**ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION**

- Extended by Acts LIX of 1949; XXX of 1950.
- “ in Bombay by Bom. Act IV of 1950.
- “ in Madhya Pradesh by M. P. Act XII of 1950.
- “ in Madras by Mad. Act XXIII of 1960.
- Adopted in Madhya Bharat by M. B. Act I of 1953.

**[THE] MUSSALMAN WAKF VALIDATING ACT, 1930**(ACT XXXII OF 1930)<sup>a</sup>

[25th July, 1930.]

*An Act to give retrospective effect to the Mussalman Wakf Validating Act, 1913.*

WHEREAS the Mussalman Wakf Validating Act, 1913, does not apply to wakfs created before its enactment ;

AND WHEREAS it is expedient to validate such wakfs without infringing any rights contrary thereto which may have already accrued or been acquired ;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1929 Pt. V, p. 240 ; and for the Report of the Select Committee, see *ibid*, 1930, Pt. V, p. 107.

This Act has been declared to be in force in the Sonthal Parganas by Notification under S. 3 (3) (a) of the Sonthal Parganas Settlement Regulation (III of 1872), see B. & O. Gaz. 1931, Pt. II, p. 903.

This Act has been extended to the new Provinces and merged States, by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to the States merged in the State of—Bombay : see Bom. Act IV of 1950, S. 3 [30-3-1950]. Madhya Pradesh : see M. P. Act XII of 1950, S. 3 [3-4-1950].

It has been adopted *mutatis mutandis* in Madhya Bharat by M. B. Adoption of Laws Act, 1953 (I of 1953), S. 2 and Sch. [24-1-1953].

The Act has been extended to the transferred territory in the State of Madras, by the Madras (Transferred Territory) Extension of Laws Act, 1960 (XXIII of 1960), S. 3 and Schedule I.

**1. Short title.**

This Act may be called THE MUSSALMAN WAKF VALIDATING ACT, 1930.

**2. Act 6 of 1913 to apply retrospectively.**

The Mussalman Wakf Validating Act, 1913, shall be deemed to apply to wakfs created before its commencement :

Provided that nothing herein contained shall be deemed in any way to affect any right, title, obligation or liability already acquired, accrued or incurred before the commencement of this Act.

*Note* : — The Mussalman Wakf Validating Act, 1913, which declared wakf-al-aulad, i. e., a perpetual bequest for the benefit of the testator's descendants, valid notwithstanding rule against perpetuities, was held not to be applicable to wakfs created before 1913. In order to remove this misconception the present Act has expressly made the 1913 Act retrospective in effect, but not so as to affect any right, title, obligation or liability already acquired, accrued or incurred before the commencement of the present Act.

**[THE] MYSORE HIGH COURT ACT, 1884**

(MYS. ACT I of 1884)

[NOTE. — In the light of the provisions contained in sections 49 (2) and 52 of the States Reorganisation Act, 1956, this Act, though an enactment of the State Legislature, is included in this Manual ; for the text of this Act see Vol. IX Page 347 of this Manual.]



**[THE] MYSORE HIGH COURT (EXTENSION OF JURISDICTION  
TO COORG) ACT, 1952**

**(ACT LXXII of 1952)**

[NOTE.—For the text of this Act see Vol. IX Page 353 of this Manual.]

**[THE] NAGA HILLS-TUENSANG AREA ACT, 1957**

**(ACT XLII of 1957)**

[The Act printed here is as on 1-10-1960.]

**C O N T E N T S**

**SECTIONS**

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| 1. Short title and commencement.                        | 4. Amendment of the Delimitation Order.                     |
| 2. Formation of Naga Hills-Tuensang Area.               | 5. Amendment of the Representation of the People Act, 1950. |
| 3. Amendment of the Sixth Schedule to the Constitution. | 6. Provision as to the sitting member of Parliament.        |
|   | 7. Territorial extent of laws not to be affected.           |

**STATEMENT OF OBJECTS AND REASONS**

"This Bill seeks to give effect to the proposal to create a new administrative unit consisting of the existing Naga Hills District now being administered by the Government of Assam, and the Tuensang Frontier Division of the North East Frontier Agency which being administered by the Governor of Assam as the agent of the President. This new unit to be named "The Naga Hills-Tuensang Area" will be administered by the Governor as the agent of the President but will be distinct

from the North East Frontier Administration. It is proposed to amend paragraph 20 of the Sixth Schedule to the Constitution and make certain consequential amendments of the Delimitation of Parliamentary and Assembly Constituencies Order, 1956, and the Representation of the People Act, 1950. Provision is made in clause 5 of the Bill for an additional nominated member in the Lok Sabha to represent the new unit."

—Gaz. of Ind., 1957, Extra, Pt. II-Sec.2, p. 859.

**[THE] NAGA HILLS-TUENSANG AREA ACT, 1957**

**(ACT XLII OF 1957)\***

[29th November, 1957]

*An Act to provide for the formation of the Naga Hills-Tuensang Area of Assam as an administrative unit.*

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1957 Extra, Pt. II-Sec. 2, p. 869.

**1. Short title and commencement.**

(1) This Act may be called **THE NAGA HILLS-TUENSANG AREA ACT, 1957.**

(2) It shall come into force on such date\* as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 1-12-1957, see Notification No. 3843 D/- 30-11-1957, Gaz. of Ind., 1957, Extra., Pt. II-Sec. 3, p. 2877.

**2. Formation of Naga Hills-Tuensang Area.**

As from the commencement of this Act, there shall be formed a new administrative unit in the State of Assam by the name of Naga Hills-Tuensang Area comprising the tribal areas which at such commencement were known as the Naga Hills District and Tuensang Frontier Division of the North East Frontier Agency.

**3. Amendment of the Sixth Schedule to the Constitution.**

In the Sixth Schedule to the Constitution, in paragraph 20,—

- (a) after sub-paragraph (2A), the following sub-paragraph shall be inserted, namely :—

“(2B) The Naga Hills-Tuensang Area shall comprise the areas which at the commencement of this Constitution were known as the Naga Hills District and the Naga Tribal Area.”;

- (b) in sub-paragraph (3) after the words “administrative area”, the brackets and words “(other than the Naga Hills-Tuensang Area)” shall be inserted ;

- (c) in Part A of the Table, item 4 shall be omitted ; and

- (d) in Part B of the Table, for item 2, the following item shall be substituted, namely :—

“2. The Naga Hills-Tuensang Area.”

*Note:*—The Sixth Schedule of the Constitution contains provisions as to the administration of tribal areas in Assam.

**4. Amendment of the Delimitation Order.**

In the Delimitation of Parliamentary and Assembly Constituencies Order, 1956,—

- (a) in the First Schedule, in the entry in column 3 against serial No. 37, the words “Naga Hills,” shall be omitted ; and

- (b) in the Second Schedule, in the part relating to Assam, the heading ‘Naga Hills District’ and all entries against serial Nos. 16, 17 and 18 shall be omitted.

**5. Amendment of the Representation of the People Act, 1950.**

In the Representation of the People Act, 1950,—

- (a) in Part II of the First Schedule—

- (i) for the entry—

“21. Part B Tribal areas ... 1”, the following entries shall be substituted, namely :—

“21. North East Frontier Tract ... 1  
22. Naga Hills-Tuensang Area ... 1”;

- (ii) for the figure “503”, the figure “504” shall be substituted ;

- (b) in the Second Schedule, for the entry in column 3 against “2. Assam”, the entry “105” shall be substituted.

**6. Provision as to the sitting member of Parliament.**

Notwithstanding the alteration in the extent of the Autonomous Districts Parliamentary constituency in Assam effected by section 4, the sitting member of the House of the People representing that constituency shall be deemed to have been elected to the House of the People by that constituency as so altered.

**7. Territorial extent of laws not to be affected.**

The provisions of section 2 shall not be deemed to have effected any change in the areas to which any law in force immediately before the commencement of this Act extends or applies, and territorial references in any such law to the Naga Hills District, the Naga Tribal Area or the Tuensang Frontier Division shall, until otherwise provided by a competent legislature or other competent authority continue to have the same meaning.

*Explanation.*—In this section, law means any law, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in India or any part thereof.

# [THE] NATIONAL CADET CORPS ACT, 1948

(ACT XXXI of 1948)

[The Act printed here is as on 1-10-1960.]

## C O N T E N T S

### SECTIONS

1. Short title, extent and application.
2. Definitions.
3. Constitution of the National Cadet Corps.
4. Constitution and disbandment of units.
5. Division of the Corps into Divisions.
6. Enrolment.
7. Central Government may raise other units.
8. Discharge.
9. Appointment of officers.
10. Duties of persons subject to this Act.
11. Punishment for offences under this Act.
12. Power to appoint Advisory Committees.
13. Power to make rules.

### STATEMENT OF OBJECTS AND REASONS

"It is considered that the present University Officers Training Corps should be overhauled, but at the same time it is felt that full development of character and the capacity for leadership will be possible only when the requisite training is given to boys and girls while they are young and impressionable.

The problem is essentially educational which can be solved adequately only if the Educational Authorities take an active interest in this aspect of training and make it an integral part of school education. A good beginning to achieve this end can be made by the introduction of cadet training in schools and

universities. With that object in view the present Bill has been drafted.

These units will be officered by members of the teaching staff, but regular training will be imparted wherever necessary by trained regular officers.

Provision is also included in the Bill for the raising of additional units as the exigencies of circumstances may require. The National Cadet Corps Committee recommended that open units should be constituted to which recruitment will be made from amongst boys earning a livelihood and the object of cl. 7 is to provide for such units."

--Gazette of India, 1948, Part V, page 368.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts III of 1951; LVII of 1952; XIX of 1955.
- Adapted by A. L. O., 1950.

# [THE] NATIONAL CADET CORPS ACT, 1948

(ACT XXXI OF 1948)\*

[16th April, 1948.]

*An Act to provide for the constitution of a National Cadet Corps.*

**WHEREAS** it is expedient to provide for the constitution of a National Cadet Corps;

**It is hereby enacted as follows :—**

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1948 Pt. V, p. 368.

This Act is made applicable to :—

- (a) the Chota Nagpur Division and the Santal Parganas District — *See* Bihar Gazette, 1948, Part I, page 1317;
- (b) Darjeeling District on and from 15-7-1948 — *See* Calcutta Gazette, 1948, Part I, page 912;
- (c) all the partially excluded areas in C. P. and Berar with certain modifications — *See* C. P. and Berar Gazette, 1948, Part I page 518.

This Act is extended to the State of Jammu and Kashmir subject to the provisions contained in the Part B States (Laws) Act, 1951 (III of 1951); *see* J. and K. Gaz. 27-12-1951, Pt. III, p. 459.

Under S. 2 of the Uttar Pradesh State Legislature Members Prevention of Disqualification (Supplementary) Act, 1953 (XX of 1953) [17-9-1953], a person shall not be disqualified for being chosen as, or for being, member of the Uttar Pradesh State Legislature by reason of the fact that he is enrolled in the National Cadet Corps under this Act.

**1. Short title, extent and application.**

(1) This Act may be called THE NATIONAL CADET CORPS ACT, 1948.

(2) It extends to the whole of India <sup>^</sup>[\* \* \*] and applies to all persons enrolled or appointed under this Act, wherever they may be.

[a] The words "except the State of Hyderabad" which were inserted by A. L. O., 1950, were omitted by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

**2. Definitions.**

In this Act, unless there is anything repugnant in the subject or context,—

"corps" means the National Cadet Corps constituted under this Act;

"enrolled" means enrolled in the Corps under this Act;

"prescribed" means prescribed by rules made under this Act;

"school" includes any institution recognised in this behalf by the Central Government or the <sup>^</sup>[State Government];

"university" means any university established by law in India and includes colleges affiliated to universities, intermediate colleges and such technical institutions of collegiate status, as are recognised in this behalf by the Central Government or the <sup>^</sup>[State Government].

**3. Constitution of the National Cadet Corps.**

There shall be raised and maintained in the manner hereinafter provided a Corps to be designated the National Cadet Corps :

Provided that the Central Government may establish all or any of the units of the Corps as and when necessary.

**4. Constitution and disbandment of units.**

The Central Government may constitute in any <sup>^</sup>[State] <sup>^</sup>[\* \* \*] one or more units of the Corps, members of which shall be recruited from amongst the students of any university or school, and may disband or reconstitute any unit so constituted.

[a] The words "or Acceding State" were omitted by A. L. O., 1950 [26-1-1950].

**5. Division of Corps into Divisions.**

There shall be three Divisions of the Corps, namely :—

(i) the Senior Division, recruitment to which shall be from amongst the students of the male sex of any university;

(ii) the Junior Division, recruitment to which shall be from amongst the students of the male sex of any school; and

(iii) the Girls Division, recruitment to which shall be from amongst the students of the female sex of any university or school.

**6. Enrolment.**

(1) Any student of the male sex of any university may offer himself for enrolment as a cadet in the Senior Division, and any student of the male sex of any school may offer himself for enrolment as a cadet in the Junior Division if he is of the prescribed age or over.

(2) Any student of the female sex of any university or school may offer herself for enrolment as a cadet in the Girls Division :

Provided that in the latter case she is of the prescribed age or over.

**7. Central Government may raise other units.**

Notwithstanding anything contained in this Act, the Central Government may, by notification, provide for the constitution of any other units of the Corps in any place and prescribe the persons or class of persons who may be eligible for enrolment therein.

*Note.*—Besides the three Divisions mentioned in S. 5, namely the Senior Division, the Junior Division and the Girls Division, the Central Government has power under this section to constitute any other unit of the Corps in any place.

**8. Discharge.**

Every person enrolled under this Act shall be entitled to receive his or her discharge from the Corps on the expiration of the period for which he or she was enrolled or on his or her ceasing to be borne on the roll of the university or school to which he or she may belong :

Provided that any person enrolled may be discharged at any time by such authority and subject to such conditions as may be prescribed.

**9. Appointment of officers.**

The Central Government may provide for the appointment of officers in or for any unit of the Corps either from amongst members of the staff of any university or school or otherwise and may prescribe the duties, powers and functions of such officers.

**10. Duties of persons subject to this Act.**

No person subject to this Act shall by virtue of being a member of the Corps be liable for active military service, but subject thereto any such person shall be liable to perform such duties and discharge such obligations as may be prescribed.

*Note.*—A person is not liable to active military service by reason of his being a member of the National Cadet Corps.

**11. Punishment for offences under this Act.**

Any person enrolled under this Act may be punished for the contravention of any rule made under this Act with fine which may extend to fifty rupees to be recovered in such manner and by such authority as may be prescribed.

**12. Power to appoint Advisory Committees.**

(1) The Central Government may for the purpose of advising it on all matters of policy connected with the constitution and administration of the Corps appoint a Central Advisory Committee consisting of the following persons, namely:—

- (a) the Minister for Defence, who shall be the Chairman of the Committee ;
- (b) the Secretary to the Government of India, Ministry of Defence, *ex.officio* ;
- (c) the Secretary to the Government of India, Ministry of Education, *ex.officio* ;
- (d) the Financial Adviser, Defence, *ex.officio* ;
- <sup>a</sup>[(e) the Chief of the Army Staff, *ex.officio* ;
- (f) the Chief of the Naval Staff, *ex.officio* ;
- (g) the Chief of the Air Staff, *ex.officio* ;]
- (h) five non-official members to be nominated by the Central Government ; and

- <sup>b</sup>[(i) two members to be elected by the House of the People and one member to be elected by the Council of States annually.]

(2) The Central Government may also appoint, for the same purpose as is specified in sub-section (1), such <sup>c</sup>[\* \*] State Advisory Committees as it may consider desirable from time to time and may prescribe their duties and functions.

[a] Substituted for the former clauses (c), (f) and (g), by the Commanders-in-Chief (Change in Designation) Act, 1955 (XIX of 1955), S. 2 and Sch. [7-5-1955]. [b] Substituted for the former clause (i), by the National Cadet Corps (Amendment) Act, 1952 (LVII of 1952), S. 2 [11-8-1952]. [c] The words "Provincial or" were omitted by A.L.O., 1950 [26-1-1950].

**13. Power to make rules.**

(1) The Central Government may make rules<sup>a</sup> to carry out the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) prescribe the conditions subject to which universities or schools shall be allowed to raise units under this Act ;
- (b) prescribe the persons or class of persons who may be eligible for enrolment under section 7 ;
- (c) prescribe the manner in which, the period for which and the conditions subject to which any person or class of persons may be enrolled under this Act ;
- (d) provide for the medical examination of persons offering themselves for enrolment under this Act ;
- (e) prescribe preliminary and periodical military training for any person or class of persons subject to this Act ;
- (f) prescribe the military or other obligations to which members of the Corps shall be liable when undergoing military training and provide generally for the maintenance of discipline amongst members of the Corps ;
- (g) prescribe the duties, powers and functions of officers appointed under this Act ;
- (h) prescribe the allowances or other remuneration payable to persons subject to this Act ;
- (i) provide for the removal or discharge of any person subject to this Act ;
- (j) prescribe the offences for which any person subject to this Act may be tried and provide for the trial thereof ;
- (k) prescribe the manner in which fines levied under this Act may be recovered ;
- (l) prescribe the duties, powers and functions of Central <sup>b</sup>[\* \*] or State Advisory Committees; and
- (m) provide for any other matter which under this Act is to be or may be prescribed.

[a] For National Cadet Corps Rules, 1948, see Notification No. 289, Gazette of India, 1949, Pt. I, sec. 3, p. 239, and for the National Cadet Corps (Girls' Division) Rules, 1949, see Notification No. 451, Gaz. of Ind., 1950, Pt. I-Sec. 3, p. 371. [b] The word "Provincial" was omitted by A.L.O., 1950 [28-1-1950].

## [THE] NATIONAL HIGHWAYS ACT, 1956

(ACT XLVIII of 1956)

[The Act printed here is as on 1-10-1960.]

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#### SECTIONS

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| 5. Responsibility for development and maintenance of national highways. | 10. Laying of notifications, rules, etc., before Parliament.    |

*THE SCHEDULE.*

## STATEMENT OF OBJECTS AND REASONS

"Under an agreement entered into with the then existing Provinces, the Government of India provisionally accepted entire financial liability, with effect from the 1st April, 1947, for the construction, development and maintenance of certain highways in the Provinces which were considered suitable for inclusion in a system of national highways. Upon the creation of the Part B States and the new Part C States under the Constitution, the national highways scheme was extended to those States also.

2. Under Entry 23 of the Union List, Parliament has exclusive power of legislation with respect to highways which are declared to be national highways by or under law made by Parliament. It is, therefore, proposed that the highways comprised in the Schedule annexed to this Bill should be declared to be national

highways. Such a declaration would help the Central Government in exercising its powers with respect to the development and maintenance of these highways more effectively. Power is also sought to be vested in the Central Government to declare by notification other highways to be national highways. Power should also be given to the Central Government to enter into agreements with the State Governments or municipal authorities with respect to the development or maintenance of any portion of any national highway and fees may have to be levied in respect of certain types of services rendered on national highways.

3. The present Bill is designed to achieve the objects set forth above."

— Gaz. of Ind., 1956, Extra., Pt. II—Sec. 2, p. 681.

## [THE] NATIONAL HIGHWAYS ACT, 1956

(ACT XLVIII of 1956)\*

[11th September, 1956.]

*An Act to provide for the declaration of certain highways to be national highways and for matters connected therewith.*

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows :

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1956, Extra., Pt. II — Sec. 2, p. 681.

**1. Short title, extent and commencement.**

(1) This Act may be called THE NATIONAL HIGHWAYS ACT, 1956.

(2) It extends to the whole of India.

(3) It shall come into force on such date\* as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 15-4-1957 : see S. R. O. 1180 D/- 4-4-1957, Gaz. of Ind., 1957, Pt. II—Sec. 3, p. 730.

**2. Declaration of certain highways to be national highways.**

(1) Each of the highways specified in the Schedule except such parts thereof as are situated within any municipal area is hereby declared to be a national highway.

(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.

*Note.*—Under Entry 23 of the Union List, Parliament has exclusive power of legislation with respect to national highways. The present Act declares the highways mentioned in the schedule to be national highways, which by virtue of S. 4 of the Act, vest in the Union. It is the responsibility of the Central Government to maintain and develop the national highways : see S. 5.

**3. Definition.**

In this Act, "municipal area" means any municipal area with a population of twenty thousand or more the control or management of which is entrusted to a municipal committee, a town area committee, a town committee or any other authority.

#### **4. National highways to vest in the Union.**

All national highways shall vest in the Union, and for the purposes of this Act "highways" include—

- (i) all lands appurtenant thereto, whether demarcated or not ;
- (ii) all bridges, culverts, tunnels causeways, carriageways and other structures constructed on or across such highways ; and
- (iii) all fences, trees, posts and boundary, furlong and mile stones of such highways or any land appurtenant to such highways.

#### **5. Responsibility for development and maintenance of national highways.**

It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

#### **6. Power to issue directions.**

The Central Government may give directions to the Government of any State as to the carrying out in the State of any of the provisions of this Act or of any rule, notification or order made thereunder.

#### **7. Fees for services or benefits rendered on national highways.**

(1) The Central Government may, by notification in the Official Gazette, levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on national highways.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.

(3) Any fee leviable immediately before the commencement of this Act for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on any highway specified in the Schedule shall continue to be leviable under this Act unless and until it is altered in exercise of the power conferred by sub section (1).

#### **8. Agreements with State Governments or municipalities.**

Notwithstanding anything contained in this Act, the Central government may enter into an agreement with the Government of any State or with any authority entrusted with the control or management of any municipal area in relation to the development or maintenance of the whole or any part of a national highway situated within the State or, as the case may be, in relation to the development or maintenance of any such part of a highway situated within a municipal area as is referred to in sub-section (1) of section 2 and any such agreement may provide for the sharing of expenditure by the respective parties thereto.

#### **9. Power to make rules.**

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the manner in which, and the conditions subject to which, any function in relation to the development or maintenance of a national highway or any part thereof may be exercised by the State Government or any



officer or authority subordinate to the Central Government or the State Government ;

- (b) the rates at which fees for services rendered in relation to the use of ferries, temporary bridges and tunnels on any national highway may be levied and the manner in which such fees shall be collected ;
- (c) the periodical inspection of national highways and the submission of inspection reports to the Central Government ;
- (d) the reports on works carried out on national highways ;
- (e) any other matter for which provision should be made under this Act.

#### 10. Laying of notifications, rules, etc., before Parliament.

All notifications or agreements issued or entered into under this Act shall be laid before both Houses of Parliament as soon as may be after they are issued or entered into and all rules made under section 9 shall be laid for not less than thirty days before both Houses of Parliament as soon as may be after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

#### THE SCHEDULE

[See section 2]

#### National Highways

Serial No.	National Highway No.	Description of national highways
1	1	The highway connecting Delhi, Ambala, Jullundur and Amritsar and proceeding to the border between India and Pakistan.
2	1A	The highway connecting Jullundur, Madhopur, Jammu, Banihal Srinagar, Baramula and Uri.
3	2	The highway connecting Delhi, Mathura, Agra, Kanpur, Allahabad, Banaras, Mohana, Barh and Calcutta.
4	3	The highway connecting Agra, Gwalior, Shivpuri, Indore, Dhulia, Nasik, Thana and Bombay.
5	4	The highway starting from its junction near Thana with the highway specified in serial No. 4 and connecting Poona, Belgaum, Hubli, Bangalore, Rampet and Madras.
6	5	The highway starting from its junction near Bharagora with the highway specified in serial No. 7 and connecting Cuttack, Bhubaneswar, Visakhapatnam, Vijayavada and Madras.
7	6	The highway starting from its junction near Dhulia with the highway specified in serial No. 4 and connecting Nagpur, Raipur, Sambalpur, Baharagora and Calcutta.
8	7	The highway starting from its junction near Banaras with the highway specified in serial No. 3 and connecting Mangawan, Rewa, Jabalpur, Lakhnadon, Nagpur, Hyderabad, Kurnool, Bangalore, Krishnagiri, Salem, Dindigul, Madurai and Cape Comorin.
9	8	The highway connecting Delhi, Jaipur, Ajmer, Udaipur, Ahmedabad, Baroda and Bombay.
10	8A	The highway connecting Ahmedabad, Limbdi, Morvi and Kandla.
11	8B	The highway starting from its junction near Bannabhore with the highway specified in serial No. 10 and connecting Rajkot and Porbandar.
12	9	The highway connecting Poona, Sholapur, Hyderabad and Vijayavada.
13	10	The highway connecting Delhi and Fazika and proceeding to the border between India and Pakistan.
14	22	The highway connecting Ambala, Kalka, Simla, Narkanda, Rampur and Chini and proceeding to the border between India and Tibet near Shipki-La.
15	24	The highway connecting Delhi, Bareilly and Lucknow.
16	25	The highway connecting Lucknow, Kanpur, Jhansi and Shivpuri.
17	26	The highway connecting Jhansi and Lakhnadon.
18	27	The highway connecting Allahabad with the highway specified in serial No. 8 near Mangawan.
19	28	The highway starting from its junction near Barauni with the highway specified in serial No. 23 and connecting Muzaffarpur, Pipra Gorakhpur and Lucknow.

Serial No.	National Highway No.	Description of national highways
20	28A	The highway starting from its junction near Pipra with the highway specified in serial No. 19 and connecting Sagauli and Raxaul and proceeding to the border between India and Nepal.
21	29	The highway connecting Gorakhpur, Ghazipur and Banaras.
22	30	The highway starting from its junction near Mohania with the highway specified in serial No. 3 and connecting Patna and Bakhtiyarpur.
23	31	The highway starting from its junction near Barhi with the highway specified in serial No. 3 and connecting Bakhtiyarpur, Mokameh, Purnea, Dalkhola, Siliguri, Sivok, and Cooch Behar and proceeding to its junction with the highway specified in serial No. 28 near Goalpara.
24	31A	The highway connecting Sivok and Gangtok.
25	33	The highway starting from its junction near Barhi with the highway specified in serial No. 3 and connecting Ranchi and Tatanagar and proceeding to its junction with the highway specified in serial No. 7 near Baharagora.
26	34	The highway starting from its junction near Dalkhola with the highway specified in serial No. 23 and connecting Berhampore, Barasat and Calcutta.
27	35	The highway connecting Barasat and Bangaon and proceeding to the border between India and Pakistan.
28	37	The highway starting from its junction near Goalpara with the highway specified in serial No. 23 and connecting Gauhati, Jorabat, Kamargaon, Makum and Saikhoa Ghat.
29	38	The highway connecting Makum, Ledo and Lekhapani.
30	39	The highway connecting Kamargaon, Imphal, and Palel and proceeding to the border between India and Burma.
31	40	The highway connecting Jorabat and Shillong and proceeding to the border between India and Pakistan near Dawki.
32	42	The highway starting from its junction near Sambalpur with the highway specified in serial No. 7 and proceeding via Angul to its junction with the highway specified in serial No. 6 near Cuttack.
33	43	The highway connecting Raipur and Vizianagaram and proceeding to its junction with the highway specified in serial No. 6 near Vizianagaram.
34	45	The highway connecting Madras, Tiruchirappalli and Dindigul.
35	46	The highway connecting Krishnagiri and Ranipet.
36	47	The highway connecting Salem, Coimbatore, Trichur, Ernakulam, Trivandrum and Cape Comorin.
37	47A	The highway starting from its junction near Trichur with the highways specified in serial No. 36 and connecting with the West Coast Road near Chalisseri.
38	49	The highway connecting Madurai and Dhanushkodi.
39	50	The highway connecting Nasik with the highway specified in Serial No. 5 near Poona.

## [THE INDIAN] NAVAL ARMAMENT ACT, 1923

## (ACT VII of 1923)

[The Act printed here is as on 1-10-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"On the 6th February 1922 a Treaty for the Limitation of Naval Armaments was signed at Washington on behalf of His Majesty. This treaty contained, *inter alia*, the provisions set out in the Schedule to this Bill. An Act enabling effect to be given to the Treaty has been passed by the British Parliament, but, as India is not included in that Act, it is necessary for the Indian Legislature to pass sepa-

rate legislation for British India. The object of this Bill, therefore, is to give effect to the provisions of the Treaty, so far as British India is concerned, by restricting, subject to certain limitations and conditions, the building of vessels of war and the altering, arming or equipping of any ship so as to adapt her for use as a vessel of war."

—Gaz. of Ind., 1922, Part V, page 348.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts VIII of 1931; II of 1937.

—Adapted by A. O. 1937; A. L. O. 1950; 3 A. L. O. 1956.

## [THE INDIAN] NAVAL ARMAMENT ACT, 1923

(ACT VII of 1923)\*

[5th March, 1923.]

*An Act to give effect b[\* \* \* \*] to the Treaty for the Limitation of Naval Armament.*

WHEREAS it is expedient to give effect b[\* \* \* \*] to the "[Treaty for the Limitation of Naval Armament and for the Exchange of Information concerning Naval Construction signed in London on behalf of His Majesty on the twenty-fifth day of March, 1936]; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1922, Pt. V, p. 348. [b] The words "in the Provinces" were omitted by A. L. O., 1950. [c] Substituted for the original words as amended by the Indian Naval Armament (Amendment) Act, 1931 (VIII of 1931), S. 2, by *ibid.*, 1937 (II of 1937), S. 2.

## 1. Short title, extent and commencement.

(1) This Act may be called THE INDIAN NAVAL ARMAMENT ACT, 1923.

\*[(2) It extends to the whole of India except b[the territories which, immediately before the 1st November, 1956, were comprised in Part B States].]

(3) It shall come into force on such date<sup>a</sup> as the <sup>a</sup>[Central Government] may, by notification in the <sup>a</sup>[Official Gazette], appoint.

[a] Substituted for the former sub-section by A. L. O., 1950 [26-1-1950]. [b] Substituted for "Part B States" by 3 A. L. O., 1956 [w. r. e. f. 1-11-1956]. Immediately before 1-11-1956, the following were Part B States: Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. [c] The Act came into force on 10-11-1923—*Vide* Notification No. 49, General Statutory Rules and Orders, Vol. V, p. 258.

## 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

(a) "competent Court" means the High Court or such other Court having unlimited original civil jurisdiction as the <sup>a</sup>[Central Government] may declare to be a competent Court for the purposes of this Act;

(b) "ship" means any boat, vessel, battery or craft, whether wholly or partly constructed, which is intended to float or is capable of floating, on water, and includes all equipment belonging to any ship;

\*[(bb) "States" denotes all the territories b[to which this Act extends]]; and

<sup>c</sup>[(c) "the Treaty" means the Treaty for the Limitation of Naval Armament and for the Exchange of Information concerning Naval Construction signed in London on behalf of His Majesty on the twenty-fifth day of March, 1936.]

[a] Inserted by A. L. O., 1950 [26-1-1950]. [b] Substituted for the words "for the time being comprised within Part A States and Part C States", by 3 A. L. O., 1956 [1-11-1956]. [c] Substituted for the original clause by the Indian Naval Armament (Amendment) Act, 1937 (II of 1937), S. 3.

### 3. Restriction on building or equipping vessels of war.

No person shall, except under and in accordance with the conditions of a licence granted under this Act,—

- (a) build any vessel of war, or alter, arm or equip any ship so as to adapt her for use as a vessel of war; or
- (b) despatch or deliver, or allow to be despatched or delivered, from any place in the <sup>a</sup>[States] any ship which has been, either wholly or partly, built, altered, armed or equipped as a vessel of war in any part of His Majesty's Dominions or <sup>a</sup>[of India] otherwise than under and in accordance with any law for the time being in force in that part <sup>b</sup>[\* \* \* \*]

[a] *Substituted* for "in a State of India", by A. L. O., 1950 [26-1-1950]. [b] The words "or State" were omitted, *ibid*.

*Note.*—The object of the Act is to give effect to the Treaty for Limitation of Naval Armament and for the Exchange of Information concerning Naval construction signed in London on behalf of His Majesty on 25-3-1936. The object of the Treaty is to restrict the building of war vessels. This section prohibits the building of or the dispatching of any vessel of war except under and in accordance with a license granted under the next section, by the Central Government. The contravention of this section is punishable under S. 5, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both. Besides this punishment, the ship is liable to be forfeited. Sections 517, 518 and 520 of the Criminal P. C., have no application to cases under this Act.

### 4. Licences.

(1) A licence under this Act for any of the purposes specified in section 3 may be granted by the <sup>a</sup>[Central Government], and shall not be refused unless it appears to the <sup>a</sup>[Central Government] that such refusal is necessary for the purpose of securing the observance of the obligations imposed by the Treaty; and, where a licence is granted subject to conditions, the conditions shall be such only as the <sup>a</sup>[Central Government] may think necessary for the purpose aforesaid.

(2) An application for a licence under this section shall be in such form and shall be accompanied by such designs and particulars as the <sup>a</sup>[Central Government] may, by general or special order, require.

<sup>a</sup>[(3) Any person who, in pursuance of a licence granted under sub-section (1) before the commencement of the Indian Naval Armament (Amendment) Act, 1937, is engaged in building any vessel of war or in altering, arming or equipping any ship so as to adapt her for use as a vessel of war, or is about to despatch or deliver, or allow to be despatched or delivered, from any place within the <sup>a</sup>[States] any ship which has been so built, altered, armed or equipped, either entirely or partly within the <sup>a</sup>[States], shall, upon written demand, furnish to the <sup>a</sup>[Central Government] such designs and particulars as may be required by the <sup>a</sup>[Central Government] for the purpose of securing the observance of the obligations imposed by the Treaty.]

[a] *Inserted* by the Indian Naval Armament (Amendment) Act, 1937 (II of 1937),<sup>a</sup>S. 4.

### 5. Offences against the Act.

(1) If any person contravenes any of the provisions of section 3 <sup>a</sup>[or fails to comply with the provisions of sub-section (3) of section 4], he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(2) Where an offence punishable under sub-section (1) has been committed by a company or corporation, every director and manager of such company or corporation shall be punishable thereunder unless he proves that the act constituting the offence took place without his knowledge and consent.

(3) Nothing contained in section 517 or section 518 or section 520 of the Code of Criminal Procedure, 1898, shall be deemed to authorise the destruction or

confiscation under the order of any Criminal Court of any ship which is liable to forfeiture under this Act or of any part of such ship.

[a] *Inserted* by the Indian Naval Armament (Amendment) Act, 1937 (II of 1937), S. 4.

## 6. Liability of ships to forfeiture.

Any ship which has been, either wholly or partly, built, altered, armed, or equipped as a vessel of war in the <sup>A</sup>[States] in contravention of section 3, or in any <sup>A</sup>[\*] part of His Majesty's Dominions or <sup>b</sup>[of India] in contravention of any like provision of law in force in that part <sup>c</sup>[\* \*], shall, if found in the <sup>A</sup>[States], be liable to forfeiture under this Act.

[a] The word "other" was *omitted* by A. L. O., 1950 [26-1-1950]. [b] *Substituted* for "any State in India", *ibid.* [c] The words "or State" were *omitted*, *ibid.*

## 7. Seizure, detention and search of ships.

(1) Where a ship is liable to forfeiture under this Act,—

(a) any Presidency Magistrate or Magistrate of the first class, or

(b) any commissioned officer on full pay in the <sup>A</sup>[Armed Forces of the Union], <sup>b</sup>[\* \* \* \*] or

(c) any officer of customs or police officer not below such rank<sup>c</sup> as may be designated in this behalf by the <sup>A</sup>[Central Government],

may seize such ship and detain it, and, if the ship is found at sea within the territorial waters<sup>d</sup> of the <sup>A</sup>[States], may bring it to any convenient port in the <sup>A</sup>[States].

(2) Any officer taking any action under sub-section (1) shall forthwith report the same through his official superiors to the <sup>A</sup>[Central Government].

(3) The <sup>A</sup>[Central Government] shall, within thirty days of the seizure, either cause the ship to be released or make or cause to be made, in the manner hereinafter provided, an application for the forfeiture thereof, and may make such orders for the temporary disposal of the ship as it thinks suitable.

[a] *Substituted* for "military, naval or air service of His Majesty", by A. L. O., 1950 [26-1-1950]. [b] The words "or any Gazetted Officer of the Royal Indian Marine Service" were *omitted* by A. O., 1937 [1-4-1937]. [c] For notifications designating the rank of such officers, see General Statutory Rules and Orders, Vol. V, p. 258. [d] For the extent of territorial waters of India (six nautical miles from the appropriate base line), see S. R. O. 669 dated 22-3-1956 published in Gaz. of Ind., 1956, Extra., Pt. II, Sec. 3, page 569.

## 8. Procedure in forfeiture of ships.

(1) An application for the forfeiture of a ship under this Act may be made by, or under authority from, the <sup>A</sup>[Central Government] to any competent Court within the local limits of whose jurisdiction the ship is for the time being.

(2) On receipt of any such application, the Court shall cause notice thereof and of the date fixed for the hearing of the application to be served upon all persons appearing to it to have an interest in the ship, and may give such directions for the temporary disposal of the ship as it thinks fit.

(3) For the purpose of disposing of an application under this section, the Court shall have the same powers and follow, as nearly as may be, the same procedure as it respectively has and follows for the purpose of the trial of suits under the Code of Civil Procedure, 1908, and any order made by the Court under this section shall be deemed to be a decree, and the provisions of the said Code in regard to the execution of decrees shall, as far as they are applicable, apply accordingly.

(4) Where the Court is satisfied that the ship is liable to forfeiture under this Act, it shall pass an order forfeiting the ship to Government :

Provided that, where any person having an interest in the ship proves to the satisfaction of the Court that he has not abetted, or connived at, or by his negligence facilitated, in any way, a contravention of section 3 in respect of the

ship, and such ship has not been built as a vessel of war, it may pass such other order as it thinks fit in respect of the ship or, if it be sold, of the sale proceeds thereof :

Provided, further, that in no case shall any ship which has been altered, armed or equipped as a vessel of war be released until it has been restored, to the satisfaction of the <sup>A</sup>[Central Government], to such condition as not to render it liable to forfeiture under this Act.

(5) The <sup>A</sup>[Central Government] or any person aggrieved by any order of a Court, other than a High Court, under this section may, within three months of the date of such order, appeal to the High Court.

## 9. Disposal of forfeit.

Where a ship has been forfeited to <sup>A</sup>[Government] under section 8, it may be disposed of in such manner as the <sup>A</sup>[Central Government] <sup>A</sup>[\* \*] directs :

Provided that, where the ship is sold under this section, due regard shall be had to the obligations imposed by the Treaty.

[a] The words "subject to the control of the Governor-General in Council" were omitted by A. O., 1937 [1-4-1937].

## 10. Special proof of relevant facts.

If, in any trial, appeal or other proceeding under the foregoing provisions of this Act, any question arises as to whether a ship is a vessel of war or whether any alteration, arming or equipping of a ship is such as to adapt it for use as a vessel of war, the question shall be referred to and determined by the <sup>A</sup>[Central Government], whose decision shall be final and shall not be questioned in any Court.

## 11. Penalties for proceeding to sea after seizure.

(1) Where a ship which has been seized or detained under section 7 or section 8 and has not been released by competent authority under this Act proceeds to sea, the master of the ship shall be punishable with fine which may extend to one thousand rupees, and the owner and any person who sends the ship to sea shall be likewise so punishable unless such owner or person proves that the offence was committed without his knowledge and consent.

(2) Where any ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any officer empowered by this Act to seize and detain the ship, the owner and master shall further each be liable, on the order of the Court trying an offence punishable under sub-section (1), to pay all the expenses of and incidental to such officer being taken to sea, and shall further be punishable with fine which may extend to one hundred rupees for every day until such officer returns or until such time as would enable him after leaving the ship to return to the port from which he was taken.

(3) Any expenses ordered to be paid under sub-section (2) may be recovered in the manner provided in the Code of Criminal Procedure, 1898, for the recovery of a fine.

## 12. Power to enter dockyards, etc.

(1) Any person empowered by this Act to seize and detain any ship may, at any reasonable time by day or night, enter any dockyard, shipyard or other place and make inquiries respecting any ship which he has reason to believe is liable to forfeiture under this Act, and may search such ship with a view to ascertaining whether the provisions of this Act have been or are being duly observed in respect thereof, and every person in charge of or employed in such place shall on request be bound to give the person so empowered all reasonable facilities for such entry and search and for making such inquiries.

(2) The provisions of sections 101, 102 and 103 of the Code of Criminal Procedure, 1898, shall apply in the case of all searches made under this section.

**13. Courts by which and conditions subject to which offences may be tried.**

No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall proceed to the trial of any offence punishable under this Act, and no Court shall proceed to the trial of any such offence except on complaint made by, or under authority from, the <sup>A</sup>[Central Government].

**14. Indemnity.**

No prosecution, suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

*THE SCHEDULE*—Articles of treaty for the Limitation of Naval Armament.  
[Repealed by the Indian Naval Armament (Amendment) Act, 1937 (11 of 1937), S. 6.]

**[THE] NAVY ACT, 1957****(ACT LXII of 1957)**

[The Act printed here is as on 1-10-1960]

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"The existing law relating to the Navy is contained in the Indian Navy (Discipline) Act, 1934. This Act was passed pursuant to section 66 of the Government of India Act, 1919, (later replaced by section 105 of the Government of India Act, 1935,) which empowered the then Indian Legislature to apply to the Naval Forces raised in India the provisions of the U. K. Naval Discipline Act. Accordingly the U. K. Naval Discipline Act, as modified and set forth in the First Schedule to the Indian Navy (Discipline) Act, 1934, was made applicable to the Indian Naval Forces. When the constitutional changes took place, action was taken to adapt this Act and it now appears as a self-contained Act.

2. This Act dealt largely with disciplinary provisions. There were no statutory provisions concerning the various matters of administration, enrolment, grant of commissions, etc.

3. It was long considered that this lacuna should be filled and when the constitutional changes took place it became evident that it would be necessary to have a consolidating statute on the subject. In the meantime, in 1950, the revised Army Act and Air Force

Act were passed by Parliament. It was not possible at that time to draft a revised Navy Bill as the present Act was modelled mainly on the corresponding British Act. In U. K., a special committee had been appointed to examine the question of the revision of the British Naval Code. It was thought that it would be an advantage to await the report of that Committee. The present draft has been made taking into account the report of that Committee.

4. In drawing up the present Bill, the provisions of the Army and Air Force Acts have been borne in mind, but changes have had to be accepted on account of difference of conditions of service of the Navy and Naval traditions and usages.

5. The main object of the present Bill is to make the law self-sufficient by incorporating the necessary provisions of certain other related enactments and regulations and to adapt the existing provisions to suit the new constitutional set-up and present day requirements.

6. The main changes in the existing law are as follows:—

(a) the maximum punishments have been modified to conform to the agreed deci-

- sion concerning punishments in the three services;
- (b) provisions have been inserted concerning grant of commissions and enrolment in the service and for prescribing conditions of service;
  - (c) provisions have been inserted pursuant to Art. 33 of the Constitution to restrict or abrogate the application of fundamental rights to the members of the Armed Forces in so far as this is necessary for the maintenance of discipline;
  - (d) provisions have been inserted for deductions from pay of officers and ratings for absence without leave, damage to Government property, etc.;
  - (e) the penal sections have been rationalised and a few amendments made which have been necessitated by experience;
  - (f) the jurisdiction to try civil offences has been modified to conform to that existing in the Army and Air Force;
  - (g) the main points of procedure of courts-martial have been incorporated in the Bill;
  - (h) officers of the non-executive branches of the Navy who were formerly not eligible to sit at courts-martial have been made eligible, it being provided, however, that the majority of the officers will consist of officers of the executive branch; it has also been provided that in certain special cases only officers of the executive branch should sit;
  - (i) provision has been made for issue of commissions to examine witnesses;
  - (j) the Indian Evidence Act has been made applicable to the proceedings of courts-martial;
  - (k) the judicial review of the Judge Advocate General of the Navy has been placed on a statutory basis and his qualifications have been prescribed;
  - (l) the existing naval courts-martial procedure permitting the accused to give evidence on oath has been continued with a slight modification to conform to the provisions in the Criminal Procedure Code as amended by the recent Criminal Procedure Code Amendment Act;
  - (m) provision has been made for winding up of estates of deceased persons."
- Gaz. of Ind., 1957, Extra., Pt. II-Sec. 2, p. 287.

### COGNATE ACTS AND PROVISIONS

1. INDIAN NAVAL ARMAMENT ACT, VII OF 1923.
2. SEAWARD ARTILLERY PRACTICE ACT, VIII OF 1949.

## [THE] NAVY ACT, 1957

### (ACT LXII OF 1957)\*

[27th December, 1957.]

*An Act to consolidate and amend the law relating to the Government of the Indian Navy*

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1957, Extra., Pt. II-Sec. 2, p. 287; and for the Report of the Joint Committee, see *ibid.*, page 848/45.

### CHAPTER I

#### PRELIMINARY

#### 1. Short title and commencement.

- (1) This Act may be called THE NAVY ACT, 1957.
- (2) It shall come into force on such date\* as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 1-1-1958, see S. R. O. 11-E, D/- 31-12-1957 published in Gaz. of Ind., 1957, Extra., Pt. II-Sec. 4, p. 81.

#### 2. Persons subject to naval law.

- (1) The following persons shall be subject to naval law wherever they may be, namely :—

- (a) every person belonging to the Indian Navy during the time that he is liable for service under this Act ;
- (b) every person belonging to the Indian Naval Reserve Forces when he is—
  - (i) on active service; or
  - (ii) in or on any property of the naval service including naval establishments, ships and other vessels, aircraft, vehicles and armouries; or

- (iii) called up for training or undergoing training in pursuance of regulations made under this Act, until he is duly released from his training; or
- (iv) called up into actual service in the Indian Navy in pursuance of regulations made under this Act, until he is duly released therefrom; or
- (v) in uniform;
- (c) members of the regular Army and the Air Force when embarked on board any ship or aircraft of the Indian Navy, to such extent and subject to such conditions as may be prescribed;
- (d) every person not otherwise subject to naval law, who enters into an engagement with the Central Government under section 6;
- (e) every person belonging to any auxiliary forces raised under this Act, to such extent and subject to such conditions as may be prescribed; and
- (f) every person who, although he would not otherwise be subject to naval law, is by any other Act or during active service by regulations made under this Act in this behalf made subject to naval law, to such extent and subject to such conditions as may be prescribed.
- (2) The following persons shall be deemed to be persons subject to naval law, namely :—
  - (a) every person ordered to be received, or being a passenger, on board any ship or aircraft of the Indian Navy, to such extent and subject to such conditions as may be prescribed;
  - (b) every person sentenced under this Act to imprisonment or detention, during the term of his sentence, notwithstanding that he is discharged or dismissed with or without disgrace from the naval service or would otherwise but for this provision cease to be subject to naval law.

### 3. Definitions.

In this Act, unless the context otherwise requires,—

- (1) “active service” means service or duty—
  - (a) during the period of operation of a Proclamation of Emergency issued under clause (1) of Article 352 of the Constitution; or
  - (b) during any period declared by the Central Government by notification in the Official Gazette as a period of active service with reference to any area in which any person or class of persons subject to naval law may be serving;
- (2) “Chief of the Naval Staff” means the flag officer appointed by the President as Chief of the Naval Staff or in his absence on leave or otherwise an officer appointed by the Central Government to officiate as such or in the absence of such officiating appointment the officer on whom the command devolves in accordance with regulations made under this Act;
- (3) “civil offence” means an offence triable by a Court of ordinary criminal jurisdiction in India;
- (4) “civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894, or under any other law for the time being in force;
- (5) “commissioned officer” means a person holding a commission from the President in the Indian Navy or the Indian Naval Reserve Forces;
- (6) “court-martial” means a court-martial constituted under this Act;

#### Section 3 — Note 1

[1] Usages referred to are usages in regard to the mode and manner of arrest and confinement and not usages under which a person

can be kept in custody or confinement. 1960 Bom 502 (510) [AIR V 47 C 135] : 1960 Cri L Jour 1558 (FB).

(7) "enemy" includes all armed rebels, armed mutineers, armed rioters and pirates and any person in arms against whom it is the duty of any person subject to naval law to act;

(8) "flag officer" means an officer of the rank of Admiral of the Fleet, Admiral, Vice-Admiral or Rear-Admiral;

(9) "Indian Naval Reserve Forces" mean the naval reserve forces raised and maintained by the Central Government;

(10) "Indian Navy" means the regular naval forces raised and maintained by the Central Government;

(11) "Indian waters", for the purposes of sections 31, 97 and 99, means the seas extending from the shores of India to such limits as may be prescribed;

(12) "naval custody" means the arrest or confinement of a person in the prescribed manner or in accordance with the usages of the naval service, and includes military or air force custody;

(13) "naval offence" means any of the offences under sections 34 to 76;

(14) "naval service" means the naval organisation of India;

(15) "naval tribunal" means a court-martial constituted under section 97 and includes a disciplinary Court constituted under section 96, a commanding officer or other officer or authority exercising powers of punishment under this Act;

(16) "officer" means a commissioned officer and includes a subordinate officer but does not include a petty officer;

(17) "petty officer" means a seaman rated as such and includes a chief petty officer;

(18) "prescribed" means prescribed by regulations made under this Act;

(19) "provost-marshal" means a person appointed as such under section 59 and includes any of his deputies or assistants or any other person lawfully exercising authority under him or on his behalf;

(20) "seaman" means a person in the naval service other than an officer;

(21) "ship", except in the expression "on board a ship", includes an establishment of the Indian Navy commissioned as a ship in accordance with the custom of the navy;

(22) "subject to naval law" means liable to be arrested and tried under this Act for any offence;

(23) "subordinate officer" means a person appointed as an acting sub-lieutenant, a midshipman or a cadet in any branch of the Indian Navy or the Indian Naval Reserve Forces, but does not include a cadet whilst under training in a joint service institution;

(24) "superior officer", when used in relation to a person subject to naval law, means any officer or petty officer who is senior to that person under regulations made under this Act and any officer or petty officer, who though not so senior to that person, is entitled under this Act or the regulations made thereunder to give a command to that person, and includes, when such person is serving under prescribed conditions, an officer, junior commissioned officer, warrant officer, non-commissioned officer of the regular Army or the Air Force of higher relative rank to that person or entitled under this Act or the regulations made thereunder to give a command to that person;

(25) all words and expressions used but not defined in this Act but defined in the Indian Penal Code, shall have the meanings respectively assigned to them in that Code.

**4. Fundamental rights to apply to persons subject to naval law with modifications.**

The rights conferred by Part III of the Constitution in their application to persons subject to naval law shall be restricted or abrogated to the extent provided in this Act.

## CHAPTER II

### THE NAVAL FORCES

**5. Power of Central Government to raise and maintain naval forces.**

The Central Government may raise and maintain a regular naval force and also reserve and auxiliary naval forces.

## CHAPTER III

### SPECIAL PROVISIONS RELATING TO DISCIPLINE IN CERTAIN CASES

**6. Provision respecting discipline of persons under engagement to serve Central Government.**

(1) If any person not otherwise subject to naval law enters into an engagement with the Central Government to serve, -

(a) in a particular ship ; or

(b) in such particular ship or in such ships as the Central Government, the Chief of the Naval Staff, or the prescribed officer may, from time to time, determine ;

and agrees to become subject to naval law upon entering into the engagement, that person shall, so long as the engagement remains in force and notwithstanding that for the time being he may not be serving in any ship, be subject to naval law.

(2) The Central Government may, by order, direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Chief of the Naval Staff, persons of any such class as may be specified in the order shall, while being subject to naval law by virtue of this section, be deemed to be officers, petty officers or other seaman, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified.

**7. Relations between the members of the Navy, Army and Air Force acting together.**

(1) When members of the regular Army and the Air Force or of either of these forces are serving with members of the Indian Navy or Indian Naval Reserve Forces under prescribed conditions, then those members of the regular Army or the Air Force shall exercise such command, if any, and be subject to such discipline as may be prescribed.

(2) Nothing in sub-section (1) shall be deemed to authorise the exercise of powers of punishment by members of the regular Army or the Air Force over members of the Indian Navy or the Indian Naval Reserve Forces, except as provided in clause (c) of sub-section (3) of section 93.

**8. Provision respecting discipline of master of merchant vessel under convoy.**

(1) Every master or other person for the time being in command of any merchant or other vessel comprised in a convoy under the command of an officer of the Indian Navy shall obey, in all matters relating to the navigation or security of the convoy, any directions which may be given by such officer, and shall take such precautions for avoiding the enemy as may be required by any such directions.

(2) If any such directions are not obeyed, any such officer or any person acting under his orders may compel obedience by force of arms without being

liable for any injury or loss of life or any danger to or loss of property resulting therefrom.

## CHAPTER IV

### COMMISSIONS, APPOINTMENTS AND ENROLMENTS

#### **9. Eligibility for appointment or enrolment.**

(1) No person who is not a citizen of India shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except with the consent of the Central Government :

Provided that nothing in this section shall render a person ineligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces on the ground that he is a subject of Nepal.

(2) No woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forming part thereof or attached thereto and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf.

#### **10. Commissions and appointments.**

(1) Officers other than subordinate officers shall be appointed by commission granted by the President.

(2) The grant of the commission shall be notified in the Official Gazette and such notification shall be conclusive proof of the grant of such commission.

(3) Subordinate officers shall be appointed in such manner and shall hold such rank as may be prescribed.

#### **11. Enrolment.**

(1) Save as otherwise provided in this Act, the terms and conditions of service of seamen, the person authorised to enrol for service as seamen and the manner and procedure of such enrolment shall be such as may be prescribed.

(2) No person shall be enrolled as a seaman in the Indian Navy for a period exceeding fifteen years in the first instance :

Provided that in the case of a minor the said period of fifteen years shall be reckoned from the date on which he attains the age of seventeen.

(3) Notwithstanding anything contained in any other law for the time being in force,—

(a) the enrolment of any person under this Act shall be binding on him both during his minority and after he attains majority ;

(b) neither the parent or guardian of a minor duly enrolled under this Act nor any other person shall be entitled to claim custody of the said minor as against the Central Government or any of its officers or other persons set over him.

#### **12. Validity of enrolment.**

Where a person after his enrolment has for a period of three months from the date of such enrolment been in receipt of pay as a seaman, he shall be deemed to have been duly enrolled and shall not thereafter be entitled to claim his discharge on the ground of any irregularity or illegality in his engagement or any other ground whatsoever ; and if within the said three months such person claims his discharge, no such irregularity or illegality or other ground shall, until such person is discharged in pursuance of his claim, affect his position as a seaman in the naval service or invalidate any proceedings, act or thing taken or done prior to his discharge.



**13. Oath of allegiance.**

Every officer and every seaman shall, as soon as may be, after appointment or enrolment make and subscribe before the commanding officer of the ship to which he belongs, or the prescribed officer an oath or affirmation in the following form, that is to say :—

"I.....do swear in the name of God  
solemnly affirm  
 that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the naval service and go wherever ordered by sea, land or air, and that I will observe and obey all commands of the President and the commands of any superior officer set over me, even to the peril of my life."

## CHAPTER V

### CONDITIONS OF SERVICE

**14. Liability for service of officers and seamen.**

(1) Subject to the provisions of sub-section (4), officers and seamen shall be liable to serve in the Indian Navy or the Indian Naval Reserve Forces, as the case may be, until they are duly discharged, dismissed, dismissed with disgrace, retired, permitted to resign, or released.

(2) No officer shall be at liberty to resign his office except with the permission of the Central Government and no seaman shall be at liberty to resign his post except with the permission of the prescribed officer.

(3) The acceptance of any resignation shall be a matter within the discretion of the Central Government or the officer concerned, as the case may be.

(4) Officers retired or permitted to resign shall be liable to recall to naval service in an emergency in accordance with regulations made under this Act, and on such recall shall be liable to serve until they have been duly discharged, dismissed, dismissed with disgrace, retired, permitted to resign, or released.

**15. Tenure of service of officers and seamen.**

(1) Every officer and seaman shall hold office during the pleasure of the President.

(2) Subject to the provisions of this Act and the regulations made thereunder,—

(a) the Central Government may discharge or retire from the naval service any officer or seaman ;

(b) the Chief of the Naval Staff or any prescribed officer may discharge from the naval service any seaman.

**16. Discharge on expiry of engagement.**

Subject to the provisions of section 18, a seaman shall be entitled to be discharged at the expiration of the term of service for which he is engaged unless —

(a) such expiration occurs during active service in which case he shall be liable to continue to serve for such further period as may be required by the Chief of the Naval Staff ; or

(b) he is re-enrolled in accordance with the regulations made under this Act.

**17. Provisions as to discharge.**

(1) A seaman entitled to be discharged under section 16 shall be discharged with all convenient speed and in any case within one month of his becoming so entitled :

Provided that where a seaman is serving overseas at the time he becomes entitled to be discharged he shall be returned to India for the purpose of being

discharged with all convenient speed, and in any case within three months of his becoming so entitled :

Provided further that where such enrolled person serving overseas does not desire to return to India, he may be discharged at the place where he is at the time.

(2) Every seaman discharged shall be entitled to be conveyed free of cost from any place he may be at the time to any place in India to which he may desire to go.

(3) Notwithstanding anything contained in the preceding sub-sections, an enrolled person shall remain liable to serve until he is duly discharged.

(4) Every seaman who is dismissed, discharged, retired, permitted to resign or released from service shall be furnished by the prescribed officer with a certificate in the language which is the mother tongue of such seaman and also in the English language setting forth—

- (a) the authority terminating his service ;
- (b) the cause for such termination ; and
- (c) the full period of his service in the Indian Navy and the Indian Naval Reserve Forces.

### **18. Saving of powers of dismissal by naval tribunals.**

Nothing in this Chapter shall affect the award by a naval tribunal of the punishment of dismissal with disgrace or dismissal from the naval service under this Act.

### **19. Restrictions respecting right to form associations, freedom of speech, etc.**

(1) No person subject to naval law shall, without the express sanction of the Central Government, —

- (a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations, or
- (b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the Armed Forces of the Union or is not of a purely social, recreational or religious nature.

*Explanation.* — If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature, the decision of the Central Government thereon shall be final.

(2) No person subject to naval law shall attend or address any meeting or take any part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be specified in this behalf by the Central Government.

(3) No person subject to naval law shall communicate with the press or publish or cause to be published any book, letter or other document having bearing on any naval, army or air force subject or containing any fact or opinion calculated to embarrass the relations between the Government and the people or any section thereof or between the Government and any foreign country, except with the previous sanction of the Central Government.

(4) No person subject to naval law shall whilst he is so subject practise any profession or carry on any occupation, trade or business without the previous sanction of the Chief of the Naval Staff.

## CHAPTER VI

### SERVICE PRIVILEGES

#### 20. Immunity from attachment.

The arms, clothes, equipments, accoutrements or necessities of any person in the naval service, while subject to naval law, shall not be seized, nor shall the pay and allowances or any part thereof of such person be attached under any process or direction issued by, or by the authority, of, any Court or public servant in respect of any claim, decree or order enforceable against him.

#### 21. Immunity from arrest for debt.

(1) No person in the naval service shall, so long as he is subject to naval law, be liable to be arrested for debt under any process or direction issued by, or by the authority of, any Court or public servant.

(2) If any such person is arrested in contravention of the provisions of sub-section (1) the Court or public servant by whom or by whose authority such process or direction was issued shall on complaint by the person arrested or by his superior officer enquire into the case and if satisfied that the arrest was made in contravention of sub-section (1), shall make an order for the immediate discharge of the person arrested and may award to the complainant the costs of the complaint to be recoverable in the same manner as if such costs were awarded to him by a decree against the person at whose instance such process or direction was issued.

(3) No court-fee shall be payable on a complaint made under sub-section (2) or for recovery of the costs that may be awarded under that sub-section.

#### 22. Immunity of persons attending court-martial or disciplinary Court from arrest.

(1) No president or other member of a court-martial or disciplinary Court, no judge advocate, no party to any proceeding before a court-martial or disciplinary Court or no advocate or agent of such party, and no witness acting in obedience to a summons to attend a court-martial or disciplinary Court shall, while proceeding to, attending or returning from a court-martial or disciplinary Court, be liable to arrest under any civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial or disciplinary Court, as the case may be.

#### 23. Remedy of aggrieved persons.

(1) If an officer or seaman thinks that he has suffered any personal oppression, injustice or other ill-treatment at the hands of any superior officer, he may make a complaint in accordance with the regulations made under this Act.

(2) The regulations referred to in sub-section (1) shall provide for the complaint to be forwarded to the Central Government for its consideration if the complainant is not satisfied with the decision on his complaint.

#### 24. Priority of hearing of cases concerning persons in the naval service.

(1) On the presentation to any Civil or Revenue Court by or on behalf of any person in the naval service while subject to naval law of a certificate from the proper naval authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the Court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper naval authority shall state the first and last day of the leave granted or applied for and set forth a description of the case with respect to which the leave has been granted or applied for, and shall be duly signed and authenticated by such authority.

(3) No fee shall be payable to the Court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case and every such certificate duly signed and authenticated as aforesaid shall be conclusive evidence of the correctness of the contents thereof.

(4) Where the Court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of the leave granted or applied for as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application, without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) Every Criminal Court before which a case is pending against a person in the naval service, shall, so far as may be possible, arrange for the early hearing and final disposal of such case.

## **25. Right of the Chief of the Naval Staff or commanding officers to obtain copies of judgments or orders made by a Criminal Court.**

A Criminal Court before which any proceedings have been taken against a person in the naval service while subject to naval law shall, on application by the Chief of the Naval Staff or the commanding officer of that person, grant copies of the judgment and final orders in the case free of cost and without delay.

## **26. Saving of rights and privileges under other laws.**

The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons in the naval service while subject to naval law or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

# **CHAPTER VII**

## **PROVISIONS AS TO PAY, PENSION, ETC., AND MAINTENANCE OF FAMILIES**

### **27. Deductions from pay, etc., not to be made unless authorised.**

No deductions other than those authorised by or under this or any other Act shall be made from the pay, pensions, gratuities, allowances and other benefits due to officers and seamen under any regulations for the time being in force.

### **28. Deductions from pay and allowances of officers.**

The following deductions may be made from the pay and allowances of an officer without recourse to trial by a naval tribunal, namely:—

(1) all pay and allowances for everyday of absence without leave, unless an explanation is given to the satisfaction of the commanding officer for such absence and approved by the Chief of the Naval Staff :

Provided that the officer is not dealt with by a naval tribunal for the said absence;

(2) all pay and allowances for everyday while he is in civil or naval custody or under suspension from duty on a charge for an offence of which he is afterwards convicted by a competent naval tribunal or Criminal Court and sentenced to imprisonment;

(3) all pay and allowances for everyday while he is in hospital on account of sickness certified by the prescribed medical officer to have been caused by an act amounting to an offence punishable under this Act:

Provided that such certificate is accepted by the Chief of the Naval Staff,

- (4) any sum required to make good the pay and allowances of any person subject to naval law which he has unlawfully retained or refused to pay;
- (5) any sum required to make good any loss, damage or destruction of Government property or property belonging to a naval mess, band or institution which after due investigation appears to the Central Government, the Chief of the Naval Staff or the prescribed officer to have been occasioned by the wrongful act or negligence on the part of the officer;
- (6) any sum required to be paid for the maintenance of his wife or legitimate or illegitimate children under the provisions of section 31;
- (7) any sum which after due investigation appears to the prescribed officer to be due to a service mess or canteen.

## 29. Deductions from pay and allowances of seamen.

The following deductions may be made from the pay and allowances of a seaman without recourse to trial by a naval tribunal, namely:—

- (1) all pay and allowances for everyday of absence without leave unless an explanation is given to the satisfaction of the commanding officer for such absence:

Provided that the seaman is not dealt with by a naval tribunal for the said absence;

- (2) all pay and allowances for everyday he is in confinement on a charge for an offence of which he is afterwards convicted by a competent naval tribunal or Criminal Court;
- (3) all pay and allowances for everyday he is in hospital on account of sickness certified by the prescribed medical officer to have been caused by an act amounting to an offence punishable under this Act:

Provided that such certificate is accepted by the Chief of the Naval Staff or the prescribed officer;

- (4) any sum required to make good any loss, damage or destruction of any property which after due investigation appears to the Central Government or the Chief of the Naval Staff or the prescribed officer to have been occasioned by the wrongful act or negligence on the part of the seaman;
- (5) any sum required to be paid for the maintenance of his wife or legitimate or illegitimate children under the provisions of section 31.

## 30. Deductions awarded by naval tribunals.

Deductions may be made from the pay and allowances of an officer or seaman in respect of any sentence of fine, forfeiture or mulcts of pay and allowances awarded in pursuance of this Act<sup>a</sup> by a naval tribunal.

[a] See Sections 81 and 82.

## 31. Liability for maintenance of wife and children.

(1) A person subject to naval law shall be liable to maintain his wife and his legitimate or illegitimate children to the same extent as if he were not so subject; but the execution or enforcement of any decree or order for maintenance passed or made against such person shall not be directed against his person, pay, arms, ammunition, equipments, instruments or clothing.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) where it appears to the satisfaction of the Central Government or the Chief of the Naval Staff or the prescribed authority that a person subject to naval law has without reasonable cause deserted or left in destitute circumstances his wife or any legitimate child unable to maintain himself or has by reason of contracting a second marriage become liable to provide separate maintenance to his first wife; or
- (b) where any decree or order is passed under any law against a person who is, or subsequently becomes, subject to naval law for the maintenance of

his wife or his legitimate or illegitimate children and a copy of the decree or order is sent to the Central Government or the Chief of the Naval Staff or the prescribed authority ;

the Central Government, or the Chief of the Naval Staff or the prescribed authority may direct a portion of the pay of the person so subject to naval law to be deducted from such pay and appropriated in the prescribed manner towards the maintenance of his wife or children, but the amount deducted shall not exceed the amount fixed by the decree or order (if any) and shall not be at a higher rate than the rate fixed by regulations made under this Act in this behalf :

Provided that in the case of a decree or order for maintenance referred to in clause (b) no deduction from pay shall be directed unless the Central Government, or the Chief of the Naval Staff or the prescribed authority is satisfied that the person against whom such decree or order has been passed or made, has had a reasonable opportunity of appearing, or has actually appeared either in person or through a duly appointed legal practitioner, to defend the case before the Court by which the decree or order was passed or made.

(3) Where arrears of maintenance under a decree or order referred to in sub-section (2) have accumulated while the person against whom the decree or order has been made is subject to naval law whether or not deductions in respect thereof have been made from his pay under this section, no step for the recovery of those arrears shall be taken in any Court after such person has ceased to be so subject unless the Court is satisfied that he has, since he ceased to be subject to naval law, the ability to pay the arrears or any part thereof and has failed to do so.

(4) Notwithstanding anything contained in any other law, where a proceeding for obtaining a decree or order for maintenance is started against a person subject to naval law,—

(a) the Court may send the process for service on that person to the commanding officer of the ship on which such person is serving or on the books of which he is borne ; or

(b) if, by reason of the ship being at sea or otherwise, it is impracticable for the Court to send the process to the commanding officer, the Court may, after not less than three weeks notice to the Central Government, send it to a Secretary to that Government for transmission to the commanding officer for service on that person :

Provided that such service shall not be valid unless there is sent along with the process such sum of money as may be prescribed to enable that person to attend the hearing of the proceeding and to return to his ship or quarters after such attendance.

(5) If a decree or order is passed or made in the proceeding against the person on whom the process is served, the sum sent along with the process shall be awarded as costs of the proceeding against that person.

(6) No process in any proceeding under this section shall be valid against a person subject to naval law if served on him after he is under orders for service at a foreign station or beyond Indian waters.

(7) The production of a certificate of the receipt of the process purporting to be signed by such commanding officer as aforesaid shall be evidence that the process has been duly served, unless the contrary is proved.

(8) Where by a decree or order a copy whereof has been sent to the Central Government or the Chief of the Naval Staff or the prescribed authority under clause (b) of sub-section (2), the person against whom the decree or order has been passed or made is directed to pay as costs any sum sent along with the process (referred to in the proviso to sub-section (4) ), the Central Government may pay to the person entitled an amount in full satisfaction of that sum and

the amount so paid by the Central Government shall be deemed to be a public demand recoverable from the person against whom the decree or order has been passed or made, and without prejudice to any other mode of recovery, may be recovered by deduction from his pay, in addition to the deductions authorised by sub-section (2).

(9) Where any person subject to naval law has made an allotment of any part of his pay and allowances for the benefit of his wife, that allotment shall not be discontinued or reduced until the Central Government or the Chief of the Naval Staff or the prescribed authority is satisfied that the allotment should no longer be made or should be reduced.

(10) In this section, the expression "pay" includes all sums payable to a person subject to naval law in respect of his services other than allowances in lieu of lodgings, rations, provisions, clothing and travelling allowances.

### **32. Limit of certain deductions.**

Except when the deductions are made under sub-sections (1), (2) and (4) of section 28 or sub-sections (1) and (2) of section 29, the total deductions from the pay and allowances of an officer or seaman shall not exceed in any one month one-half of his pay and allowances for that month.

### **33. Remission of deductions.**

(1) Any deduction from the pay and allowances authorised by or under this Act may be remitted by the Chief of the Naval Staff in his discretion.

(2) Such deduction may also be remitted in such manner and to such extent and by such other authority as may be prescribed.

## CHAPTER VIII ARTICLES OF WAR

### **34. Misconduct in action by certain officers.**

Every flag officer, captain, commander or commanding officer subject to naval law, who,—

- (a) upon signal of battle or on sight of a ship of an enemy which it may be his duty to engage, does not use his utmost exertion to bring his ship into action; or
  - (b) his ship being in action does not, during such action in his own person and according to his rank, encourage the persons under his command to fight courageously; or
  - (c) surrenders his ship to the enemy when capable of making a successful defence; or
  - (d) in time of action, improperly withdraws from the fight;
- shall,
- if he has acted traitorously, be punished with death;
  - if he has acted from cowardice, be punished with death or such other punishment as is hereinafter mentioned; and
  - if he has acted from negligence or through other default, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

### **35. Misconduct in not pursuing the enemy and not assisting a friend in view.**

Every officer subject to naval law, who,—

- (a) forbears to pursue the chase of any enemy beaten or flying; or
- (b) does not relieve and assist a known friend in view to the utmost of his power; or

(c) during war or active service or in action, improperly forsakes his station; shall

if he has acted traitorously, be punished with death;

if he has acted from cowardice, be punished with death or such other punishment as is hereinafter mentioned; and

If he has acted from negligence or through other default, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

### **36. Delaying or discouraging the service, deserting post, etc.**

When any action or any service is commanded, every person subject to naval law, who,—

(a) delays or attempts to delay or discourages such action or service upon any pretence whatsoever; or

(b) in the presence or vicinity of the enemy deserts his post; or

(c) in the presence or vicinity of the enemy sleeps upon his watch;

shall be punished with death or such other punishment as is hereinafter mentioned.

*Explanation.*—In this section, service means a naval operation in war or during active service and includes a naval demonstration.

### **37. Penalty for disobedience in action.**

Every person subject to naval law who disobeys, or does not use his utmost exertions to carry, the orders of his superior officers into execution when ordered to prepare for action, or during the action, shall,

If he has acted traitorously, be punished with death;

if he has acted from cowardice, be punished with death or such other punishment as is hereinafter mentioned; and

If he has acted from negligence or through other default, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

### **38. Penalty for spying.**

Every person not otherwise subject to naval law who is or acts as a spy for the enemy shall be punished under this Act with death or such other punishment as is hereinafter mentioned as if he were a person subject to naval law.

### **39. Correspondence, etc., with the enemy.**

Every person subject to naval law, who,—

(a) traitorously holds correspondence with the enemy or gives intelligence to the enemy; or

(b) fails to make known to the proper authorities any information he may have received from the enemy; or

(c) assists the enemy with any supplies; or

(d) having been made a prisoner of war, voluntarily serves with or aids the enemy;

shall be punished with death or such other punishment as is hereinafter mentioned.

### **40. Improper communication with the enemy.**

Every person subject to naval law who without any traitorous intention holds any improper communication with the enemy shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned.



**41. Deserting post and neglect of duty.**

Every person subject to naval law, who,—

- (a) deserts his post; or
- (b) sleeps upon his watch; or
- (c) negligently performs the duty imposed on him; or
- (d) wilfully conceals any words, practice or design tending to the hindrance of the naval service;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

**42. Mutiny defined.**

Mutiny means any assembly or combination of two or more persons subject to naval law with the common object of,—

- (a) disobeying or resisting lawful naval authority;
- (b) showing contempt for or insubordination to or embarrassing lawful naval authority;
- (c) undermining naval discipline in a ship or among a body of persons subject to naval law; or
- (d) seducing any person subject to military, naval or air force law from his allegiance to the Constitution or loyalty to the State or duty to his superior officers;

and includes mutiny in the regular Army or Air Force or any Forces co-operating therewith.

**43. Punishment for mutiny.**

Every person subject to naval law, who,—

- (a) joins in a mutiny; or
- (b) begins, incites, causes or conspires with any other persons to cause, a mutiny; or
- (c) endeavours to incite any person to join in a mutiny or to commit an act of mutiny; or
- (d) endeavours to seduce any person in the regular Army, Navy or Air Force from his allegiance to the Constitution or loyalty to the State or duty to his superior officers or uses any means to compel or induce any such person to abstain from acting against the enemy or discourage such person from acting against the enemy; or
- (e) does not use his utmost exertions to suppress a mutiny; or
- (f) wilfully conceals any traitorous or mutinous practice or design or any traitorous words spoken against the State; or
- (g) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny does not without delay give information thereof to the commanding officer of his ship or other superior officer; or
- (h) utters words of sedition or mutiny;

shall be punished with death or such other punishment as is hereinafter mentioned.

**44. Persons on boardships or aircraft seducing naval personnel from allegiance.**

Every person not otherwise subject to naval law who being on board any ship or aircraft of the Indian Navy or on board any ship in the service of the Government endeavours to seduce from his allegiance to the Constitution or loyalty to the State or duty to superior officers any person subject to naval law shall be punished under this Act with death or such other punishment as is hereinafter mentioned as if he were a person subject to naval law.

**45. Striking superior officers.**

Every person subject to naval law who commits any of the following offences, that is to say,—

- (a) strikes or attempts to strike his superior officer; or
  - (b) draws or lifts up any weapon against such officer; or
  - (c) uses or attempts to use any violence against such officer;
- shall be punished,—

if the offence is committed on active service with imprisonment for a term which may extend to ten years or such other punishment as is herein-after mentioned; and

in any other case, with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

**46. Ill-treating subordinates.**

Every person subject to naval law who is guilty of ill-treating any other person subject to such law, being his subordinate in rank or position, shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

**47. Disobedience and insubordination.**

Every person subject to naval law, who,—

- (a) wilfully disobeys any lawful command of his superior officer; or
- (b) in the presence of his superior officer, or otherwise shows or expresses his intention to disobey a lawful command given by such superior officer; or
- (c) uses insubordinate, threatening or insulting language to his superior officer; or
- (d) behaves with contempt to his superior officer;

shall, if the offence is committed on active service or in a manner to show wilful defiance of authority, be punished with imprisonment for a term which may extend to ten years or such other punishment as is hereinafter mentioned and in other cases, be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

**48. Quarrelling, fighting and disorderly behaviour.**

Every person subject to naval law, who,—

- (a) quarrels, fights with or strikes any other person, whether such person is or is not subject to naval law; or
- (b) uses reproachful or provoking speeches or gestures tending to make a quarrel or disturbance; or
- (c) behaves in a disorderly manner;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

**49. Desertion.**

(1) Every person subject to naval law who absents himself from his ship or from the place where his duty requires him to be, with an intention of not returning to such ship or place, or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place is said to desert.

(2) Every person who deserts shall,—

- (a) if he deserts to the enemy, be punished with death or such other punishment as is hereinafter mentioned; or
- (b) if he deserts under any other circumstances, be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned;

and in every such case he shall forfeit all pay, head money, bounty, salvage, prize money and allowances that have been earned by him and all annuities, pensions, gratuities, medals and decorations that may have been granted to him and also all clothes and effects which he may have left on board the ship or the place from which he deserted, unless the tribunal by which he is tried or the Central Government or the Chief of the Naval Staff, otherwise directs.

#### **50. Inducing person to desert.**

Every person subject to naval law who endeavours to seduce any other person subject to naval law to desert shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

#### **51. Breaking out of ship and absence without leave.**

Every person subject to naval law who without being guilty of desertion improperly leaves his ship or place of duty or is absent without leave shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned and shall also be punished by such mulets of pay and allowances as may be prescribed.

#### **52. Drunkenness.**

Every person subject to naval law who is guilty of drunkenness shall, if the offence is committed on active service, be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned and in other cases be punished with imprisonment for a term which may extend to six months or such other punishment as is hereinafter mentioned.

#### **53. Uncleanliness or indecent acts.**

Every person subject to naval law who is guilty of,—

(a) uncleanliness; or

(b) any indecent act;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

#### **54. Cruelty and conduct unbecoming the character of an officer.**

(1) Every officer subject to naval law who is guilty of cruelty shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

(2) Every officer subject to naval law who is guilty of any scandalous or fraudulent conduct or of any conduct unbecoming the character of an officer shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

#### **55. Losing ship or aircraft.**

(1) Every person subject to naval law who designedly loses, strands or hazards or suffers to be lost, stranded or hazarded any ship of the Indian Navy or in the service of the Government, or loses or suffers to be lost any aircraft of the Indian Navy or in the service of the Government shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned.

(2) Every person subject to naval law who negligently or by any default loses, strands or hazards or suffers to be lost, stranded or hazarded any ship of the Indian Navy or in the service of the Government, or loses or suffers to be lost any aircraft of the Indian Navy or in the service of the Government shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

**56. Offences by officers in charge of convoy.**

(1) All officers appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf.

(2) Every such officer subject to naval law, who,—

- (a) does not defend the ships and goods under his convoy without deviation to any other objects; or
- (b) refuses to fight in their defence if they are assailed; or
- (c) cowardly abandons and exposes the ships in his convoy to hazard; or
- (d) demands or exacts any money or other reward from any merchant or master for convoying any ships or vessels entrusted to his care; or
- (e) misuses the masters or mariners thereof;

shall be punished with death or such other punishment as is hereinafter mentioned, and shall also make such reparation in damages to the merchants, owners and others as a civil court of competent jurisdiction may adjudge.

**57. Taking unauthorised goods on board ship.**

Every officer subject to naval law in command of any ship of the Indian Navy who receives on board or permits to be received on board such ship any goods or merchandise whatsoever other than for the sole use of the ship or persons belonging to the ship, except goods and merchandise on board any ship which may be shipwrecked or in imminent danger either on the high seas or in some port, creek, or harbour, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Central Government or his superior officer, shall be punished with dismissal from the naval service or such other punishment as is hereinafter mentioned.

**58. Offences in respect of property.**

Every person subject to naval law who wastefully expends or fraudulently buys, sells or receives any property of Government or property belonging to a naval, military or air force mess, band or institution, and every person who knowingly permits any such wasteful expenditure, or any such fraudulent purchase, sale or receipt, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

**59. Arson.**

Every person subject to naval law who unlawfully sets fire to any dockyard, victualling yard or steam factory yard, arsenal, magazine, building, stores or to any ship, vessel, hoy, barge, boat, aircraft, or other craft or furniture thereunto belonging, not being the property of an enemy, shall be punished with death or such other punishment as is hereinafter mentioned.

**60. Falsifying official documents and false declarations.**

Every person subject to naval law—

- (a) who knowingly makes or signs a false report, return, list, certificate, book, muster or other document to be used for official purposes; or
- (b) who commands, counsels or procures the making or signing thereof; or
- (c) who aids or abets any other person in the making or signing thereof; or
- (d) who knowingly makes, commands, counsels or procures the making of, a false or fraudulent statement or a fraudulent omission in any such document;

shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

**61. Malingering, etc.**

Every person subject to naval law —

(a) who wilfully does any act or wilfully disobeys any orders whether in hospital or elsewhere with intent to produce or to aggravate any disease or infirmity or to delay his cure ; or

(b) who feigns any disease, infirmity or inability to perform his duty ;

shall be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

**62. Penalty for endeavouring to stir up disturbance on account of unwholesomeness of victuals or other just grounds.**

Every person subject to naval law who has any cause of complaint either of the unwholesomeness of the victuals or upon any other just ground shall quietly make the same known to his superior or captain or to the Chief of the Naval Staff, in accordance with the prescribed channels of communication and the said superior, captain or Chief of the Naval Staff shall, as far as he is able, cause the same to be presently remedied ; and every person subject to naval law who upon any pretence whatever attempts to stir up any disturbance shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned.

**63. Offences in respect of papers relating to prize.**

(1) All the papers, charter-parties, bills of lading, passports and other writings whatsoever that shall be taken, seized or found aboard any ships which are taken as prize, shall be duly preserved and the commanding officer of the ship which takes such prize shall send the originals entire and without fraud to the Court of competent jurisdiction or such other Court or commissioners as shall be authorised to determine whether such prize be lawful capture, there to be viewed, made use of and proceeded upon according to law.

(2) Every commanding officer who wilfully fails to send the papers, charter-parties, bills of lading, passports or other writings whatsoever that shall be taken, seized, or found aboard any ships which are taken as prize to the proper Court or other authority shall be punished with dismissal from the naval service or such other punishment as is hereinafter mentioned and in addition shall forfeit and lose any share of the capture.

**64. Offences in respect of prize.**

Every person subject to naval law who takes out of any prize or ship seized for prize, any money, plate, or goods, unless it is necessary for the better securing thereof, or for the necessary use and service of any ships of war of the Indian Navy, before the same be adjudged lawful prize in a Court of competent jurisdiction, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned, and in addition shall forfeit and lose his share of the capture.

**65. Offences in respect of persons on board a prize ship.**

Every person subject to naval law who in any sort pillages, beats, or ill-treats officers, mariners or other persons on board a ship or vessel taken as prize or who unlawfully strips them off their clothes, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

**66. Unlawful taking or ransoming a prize.**

Every commanding officer of a ship of the Indian Navy subject to naval law, who,—

(a) by collusion with the enemy takes as prize any vessel, goods or thing; or

(b) unlawfully agrees with any person for the ransoming of any vessel, goods or thing taken as prize; or

(c) in pursuance of any unlawful agreement for ransoming or otherwise by collusion actually quits or restores any vessel, goods or thing taken as prize ;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

### **67. Breaking bulk on board a prize ship.**

Every person subject to naval law who breaks bulk on board any vessel taken as prize or detained in the exercise of any belligerent right or under any law relating to piracy or to the slave trade or to the customs, with intent dishonestly to misappropriate anything therein or belonging thereto, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

### **68. Violation of the Act, regulations and orders.**

Every person subject to naval law who neglects to obey or contravenes any provisions of this Act or any regulation made under this Act or any general or local order, shall, unless other punishment is provided in this Act for such neglect or contravention, be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

### **69. Offences in relation to Court-martial.**

Every person subject to naval law, who,—

- (a) being duly summoned or ordered to attend as a witness before a Court-martial wilfully or without reasonable excuse fails to attend ; or
- (b) refuses to take an oath or make an affirmation legally required by a Court-martial to be taken or made; or
- (c) being sworn, refuses to answer any questions which he is in law bound to answer; or
- (d) refuses to produce or deliver up a document in his power which the Court may legally demand; or
- (e) is guilty of contempt of Court-martial;

shall be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

### **70. Fraudulent entry.**

Every person who upon entry into or offering himself to enter the naval service wilfully makes or gives any false statement whether orally or in writing to any officer or person authorised to enter or enrol seamen or others in or for such naval service, shall, if he has become subject to naval law, be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

### **71. Escape from custody.**

Every person subject to naval law who being in lawful custody escapes or attempts to escape from such custody shall be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

### **72. Failure to assist in detention of offenders.**

Every person subject to naval law, who,—

- (a) does not use his utmost endeavours to detect, apprehend or bring to punishment all offenders against this Act; or
- (b) does not assist the officers appointed for that purpose;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

**73. Penalty for failure to attend by members of reserve forces when called up.**

Every member of the Indian Naval Reserve Forces who, when called up for training or when called up into actual service with the Indian Navy in pursuance of the regulations made under this Act, and required by such call to join any ship or attend at any place, fails, without reasonable excuse to comply with such requirement, shall be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

**74. Offences against good order and naval discipline.**

Every person subject to naval law who is guilty of an act, disorder, or neglect to the prejudice of good order and naval discipline, not hereinbefore specified, shall be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

**75. Attempts.**

Every person subject to naval law who attempts to commit any of the offences specified in sections 34 to 74 and 76 and in such attempt does any act towards the commission of the offence shall, where no express provision is made by this Act for the punishment of such attempt, be punished,

- (a) if the offence attempted to be committed is punishable with death, with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned, and
- (b) if the offence attempted to be committed is punishable with imprisonment, with one-half of the maximum punishment provided for the offence or with such other punishment as is hereinafter mentioned.

**76. Abetment of offences.**

Any person subject to naval law who abets the commission of any of the offences specified in sections 34 to 74 shall, whether the act abetted is committed or not in consequence of the abetment, and where no express provision is made by this Act for the punishment of such abetment, be punished with the punishment provided for that offence.

**77. Civil offences.**

(1) Every person subject to naval law who commits a civil offence punishable with death or with imprisonment for life shall be punished with the punishment assigned for that offence.

(2) Every person subject to naval law who commits any other civil offence shall be punished either with the punishment assigned for the offence or with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

**78. Jurisdiction as to place and offences.**

(1) Subject to the provisions of sub-section (2), every person subject to naval law who is charged with a naval offence or a civil offence may be tried and punished under this Act regardless of where the alleged offence was committed.

(2) A person subject to naval law who commits an offence of murder against a person not subject to army, naval or air force law or an offence of culpable homicide not amounting to murder against such person or an offence of rape in relation to such person shall not be tried and punished under this Act unless he commits any of the said offences—

- (a) while on active service; or
- (b) at any place outside India; or
- (c) at any place specified by the Central Government by notification in this behalf.

**79. Jurisdiction as to time.**

No person unless he is an offender who has avoided apprehension or fled from justice or committed the offence of desertion or fraudulent entry or the offence of mutiny shall be tried or punished in pursuance of this Act for any offence committed by him unless such trial commences within three years from the commission of such offence :

Provided that in the computation of the said period of three years any time during which an offender was outside India or any time during which he was a prisoner of war shall be deducted :

Provided further that no trial for an offence of desertion other than desertion on active service or fraudulent entry shall be commenced if the person in question not being an officer has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years in the Indian Navy.

**80. Trial after a person ceases to be subject to naval law.**

When any offence mentioned in this Chapter has been committed by any person while subject to naval law and such person has since the commission of the offence ceased to be subject to naval law, he may be taken into and kept in custody, tried and punished under this Act for such offence in like manner as he may have been taken into and kept in custody, tried and punished if he had continued subject to naval law :

Provided that he shall not be tried for such offence except in the case of an offence of mutiny or desertion, unless the trial against him commences within six months after he has ceased to be so subject.

## CHAPTER IX

## PROVISIONS AS TO PUNISHMENTS

**81. Punishments.**

(1) The following punishments may be inflicted under this Act, namely :—

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term;
- (c) dismissal with disgrace from the naval service;
- (d) detention;
- (e) dismissal from the naval service;
- (f) forfeiture of seniority in rank in the case of officers;
- (g) forfeiture of time for promotion in the case of subordinate officers;
- (h) dismissal from the ship to which the offender belongs;
- (i) disrating, in the case of subordinate and petty officers and persons holding leading rates;
- (j) fine, in respect of civil offences;
- (k) mulcts of pay and allowances;
- (l) severe reprimand or reprimand;
- (m) forfeiture of pay, head money, bounty, salvage, prize money and allowances earned by, and all annuities, pensions, gratuities, medals and decorations granted to, the offender or of any one or more of the above particulars; also in the case of desertion, of all clothes and effects left by the deserter in the ship to which he belongs;
- (n) such minor punishments as are inflicted according to the custom of the navy or may from time to time be prescribed.

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.



**82. Provisions as to award of punishment.**

(1) The punishments that may be inflicted under this Act shall be awarded in accordance with the provisions of the following sub sections.

(2) Except in the case of mutiny in time of war or on active service, the punishment of death shall not be inflicted on any offender until the sentence has been confirmed by the Central Government.

(3) The punishment of imprisonment for a term exceeding two years shall in all cases be accompanied by a sentence of dismissal with disgrace from the naval service.

(4) The punishment of imprisonment for a term not exceeding two years may in all cases be accompanied by a sentence of dismissal with disgrace or dismissal from the naval service :

Provided that in the case of officers, unless the sentence of dismissal with disgrace is also awarded, such sentence of imprisonment shall involve dismissal from the naval service.

(5) The sentence of imprisonment may be rigorous or simple, or partly rigorous and partly simple.

(6) The sentence of dismissal with disgrace shall involve in all cases forfeiture of all pay, head money, bounty, salvage, prize money any allowances that have been earned by and of all annuities, pensions, gratuities, medals and decorations that may have been granted to the offender and an incapacity to serve Government again in a defence service, or a civil service, or to hold any post connected with defence or any civil post under the Government :

Provided that the forfeiture of moneys shall not apply, except in the case of deserters, to moneys which should have been paid on the last pay day preceding conviction.

(7) The punishment of dismissal from the naval service shall in the case of persons who hold any lien on appointments in the regular Army or Air Force, involve dismissal from such army or air force service.

(8) The punishment of detention may be inflicted for any term not exceeding two years, but no sentence of detention shall be awarded unless naval detention quarters or army or air force detention barracks are in existence.

(9) The punishment of imprisonment or detention whether on board ship or on shore shall, subject to the provisions of sub-section (11), involve disrating in the case of a petty officer or a person holding a leading rate, and shall in all cases be accompanied by stoppage of pay and allowances during the term of imprisonment or detention :

Provided that where the punishment awarded is detention for a term not exceeding fourteen days, the sentence may direct that the punishment shall not be accompanied by stoppage of pay and allowances during the term of detention.

(10) No officer shall be subject to detention.

(11) The punishment of forfeiture of seniority shall be imposed in the substantive rank held at the date of the sentence, and shall involve a corresponding forfeiture of seniority in every higher acting rank subject always to the condition that forfeiture of seniority in any rank shall in no case exceed the seniority in that rank at the date of the sentence.

**Section 82 — Note 1**

[1] The word "detention" in S. 82 (10) is used in the sense in which it is used in S. 81 (1), cl. (d) which specifies the punishments which may be inflicted under the Act. In view of the prohibition contained in S. 82 (10), the punishment of detention cannot be awarded to a commissioned officer. A distinction, however, must be drawn between detention as a measure of punishment and detention in cus-

tody, say pending trial. Hence an order by the Governor under Art. 161 of the Constitution directing detention of a commissioned naval officer in naval jail custody pending the decision of the Supreme Court in appeal which the officer proposed to file against his conviction cannot be challenged on the ground that it is prohibited by S. 82 (10). 1960 Bom 502 (509) [AIR V 47 C 135] : 1960 Cri L Jour 1558 (FB).

(12) The punishment of forfeiture of seniority shall involve the loss of the benefit of service included in the seniority forfeited for the purposes of pay, pension, gratuity, promotion and such other purposes, as may be prescribed, provided that such pay, pension, gratuity and promotion and other purposes depend upon such service.

(13) The punishment of forfeiture of time for promotion shall delay the promotion by the time specified.

(14) No person shall be disgraced below the limits prescribed, or lower either actually or relatively than the rating in which he entered or was appointed in the naval service.

(15) Mulets of pay and allowances shall not be awarded except as provided in sub-sections (16) and (17).

(16) Mulets of pay and allowances shall be awarded in accordance with the regulations made under this Act on conviction of offences under section 51.

(17) Mulets of pay may also be awarded to make good any proved loss or damage occasioned by the offence on which there is a conviction, and for the offence of drunkenness by seamen.

(18) The punishment of fine may be awarded in respect of civil offences in addition to, or in lieu of, other punishments specified in this Act.

(19) The forfeiture of moneys under clause (m) of sub-section (1) of section 81 shall not, except in case of desertion apply to moneys which should have been paid on the last pay day preceding conviction.

(20) All other punishments authorised by this Act may be inflicted in such manner as is heretofore in use in the naval service or as may be prescribed.

(21) Subject to the provisions of the foregoing sub-sections, where any punishment is specified by this Act as the penalty for an offence and it is further declared that "such other punishment as is hereinafter mentioned" may be awarded in respect of the same offence, the expression "such other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale of punishments laid down in sub-section (1) of section 81.

## CHAPTER X

### ARREST

#### **83. Power to issue warrants of arrest.**

(1) The Chief of the Naval Staff, every officer in command of a fleet or squadron of ships of the Indian Navy or of any ship of the Indian Navy or the senior officer present at a port or an officer having by virtue of sub-sections (2) and (3) of section 93 power to try offences, may, by warrant under his hand, authorise any person to arrest any offender subject to naval law for any offence triable under this Act mentioned in such warrant and any such warrant may include the names of more persons than one in respect of several offences of the same nature.

(2) Any person named in any such warrant as aforesaid may, forthwith on his arrest, if the warrant so directs, be taken to the ship of the Indian Navy to which he belongs or some other ship of the Indian Navy.

(3) A person authorised to arrest an offender may use such force as may be necessary for the purpose of effecting such arrest.

(4) Where a warrant under sub-section (1) is issued to a police officer, the police officer shall take steps to execute the warrant and arrest the offender in like manner as if such warrant had been issued by a Magistrate of competent jurisdiction and shall, as soon as may be, deliver the person when arrested into naval custody.

**84. Arrest without warrant.**

(1) Any person subject to naval law may be ordered without warrant into naval custody by any superior officer for any offence triable under this Act.

(2) A person subject to naval law may arrest without warrant any other person subject to naval law though he may be of a higher rank who in his view commits an offence punishable with death, or imprisonment for life or for a term which may extend to fourteen years.

(3) A provost-marshal may arrest any person subject to naval law in accordance with the provisions of section 89.

(4) It shall be lawful for the purpose of effecting arrest, or taking a person into custody, without warrant to use such force as may be necessary for the purpose.

**85. Procedure and conditions of naval custody.**

(1) No person subject to naval law who is arrested under this Act shall be detained in naval custody without being informed, as soon as may be, of the grounds for such arrest.

(2) Every person subject to naval law who is arrested and detained in naval custody shall be produced before his commanding officer or other officer prescribed in this behalf within a period of forty-eight hours of such arrest excluding the time necessary for the journey from the place of arrest to such commanding or other officer and no such person shall be detained in custody beyond the said period without the authority of such commanding or other officer.

**86. Investigation after arrest.**

The charge made against any person subject to naval law taken into custody shall without any unnecessary delay be investigated by the proper authority and as soon as may be either proceedings shall be taken for the trial or such person shall be discharged from custody.

**87. Duty to receive or keep in custody.**

(1) The commanding officer shall be responsible for the safe custody of every person who is in naval custody on board his ship or in his establishment.

(2) The officer or seaman in charge of a guard, or a provost-marshal shall receive and keep any person who is duly committed to his custody.

**88. Procedure before trial.**

Subject to the provisions of this Act, the procedure before trial and the manner of investigation shall be as prescribed.

**89. Provost-marshals.**

(1) Provost-marshals may be appointed by the Chief of the Naval Staff or the prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons in naval custody, to preserve good order and discipline and to prevent breaches of the same by persons subject to naval law or to the law in force relating to the government of the regular Army or the Air Force.

(3) A provost marshal may at any time arrest and detain for trial any person subject to naval law who commits, or is charged with, an offence and may also

**Section 89 — Note 1**

[1] The word "trial" is well understood in criminal law and it ends when the proceedings in the trial Court come to an end. The various provisions of the Navy Act, such as ss. 89 (3), 122, 123 and 146, also show that the word "trial" is used in the same sense in the Act.

1960 Bom 502 (510) [A I R V 47 C 135] : 1960 Cri L Jour 1538 (FB).

[2] Person subject to naval law convicted for murder by ordinary criminal Court — Detention in naval jail after conviction — Not authorised. 1960 Bom 502 (510) [A I R V 47 C 135] : 1960 Cri L Jour 1538 (FB).

carry into effect any punishment to be inflicted in pursuance of a sentence passed under this Act, but shall not inflict any punishment on his own authority :

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

(4) For the purpose of sub-sections (2) and (3), a provost-marshal shall be deemed to include a provost-marshal and any of his assistants appointed under the law in force relating to the government of the regular Army or the Air Force.

## CHAPTER XI

### CHARGE

#### 90. Joinder of charges.

For every distinct offence of which any person is accused, there shall be a separate charge but except as otherwise provided by regulations made under this Act all separate charges may be tried together.

#### 91. Acts amounting to different offences.

If a single act or series of acts is of such a nature that it is doubtful which of several offences the acts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at one trial; or he may be charged in the alternative with having committed some one of the said offences.

#### 92. Joinder of accused person.

The following persons may be charged and tried together, namely : —

- (i) persons accused of the same offence committed in the course of the same transaction ;
- (ii) persons accused of an offence and persons accused of abetment of, or an attempt to commit, such offence ; and
- (iii) persons accused of different offences committed in the course of the same transaction :

Provided that in a trial by a court-martial the trial judge advocate may, on the application made in this behalf by any accused, direct that each of the accused be tried separately by the same court-martial.

## CHAPTER XII

### AUTHORITIES HAVING POWER TO AWARD PUNISHMENTS

#### 93. Power of Court-martial and commanding officers to try offences.

(1) An offence triable under this Act may be tried and punished by Court-martial.

(2) An offence not capital which is triable under this Act and which is committed by a person other than an officer (and in cases by this Act expressly provided for when committed by an officer), may, subject to regulations made under this Act be summarily tried and punished by the commanding officer of the ship to which the offender belongs at the time either of the commission or of the trial of the offence, subject to the restriction that the commanding officer shall not have power to award imprisonment or detention for more than three months, or to award dismissal with disgrace from the naval service :

Provided that no sentence of imprisonment or dismissal shall be carried into effect until approved by the prescribed authorities.

(3) The power by this section vested in a commanding officer of a ship may, subject to regulations made under this Act,—

- (a) as respects seamen on board a tender to the ship, be exercised in the case of a single tender absent from the ship, by the officer in command of

such tender and in the case of two or more tenders absent from the ship in company or acting together, by the officer in immediate command of such tenders ;

(b) as respects seamen on board any boat belonging to the ship, be exercised when such boat is absent on detached service by the officer in command of the boat ;

(c) as respects seamen on detached service either on shore or otherwise, be exercised by the officer in immediate command of those persons ;

(d) as respects seamen quartered in naval barracks, be exercised by the officer in command of the barracks ;

(e) as respects <sup>un</sup>seamen attached to or serving with any body of the regular <sup>Armed</sup> <sup>Force</sup> <sup>the</sup> Air Force under prescribed conditions, be exercised by the commanding officer of any such body of the regular Army or the Air Force.

(4) The commanding officer of a ship or barracks may delegate the power of awarding punishments inferior in scale to dismissal, to other officers under his command in accordance with the regulations made under this Act.

#### **94. Power of Central Government, Chief of the Naval Staff and other officers to impose forfeiture of time or seniority.**

(1) The Central Government may impose the punishment of forfeiture of time or seniority of not more than twelve months on any subordinate officer.

(2) The Chief of the Naval Staff may impose the punishment of forfeiture of time or seniority of not more than six months on any subordinate officer.

(3) The commanding officer of a ship may subject to regulations made under this Act, impose the punishment of forfeiture of time or seniority of not more than three months on any subordinate officer.

(4) In imposing punishments under sub-sections (1) and (2), it shall not be necessary for the Central Government or the Chief of the Naval Staff, as the case may be, to hear the accused in person or by any friend or counsel.

#### **95. Disciplinary Courts when may be constituted.**

When an officer is, in time of war or during active service, alleged to have been guilty of a disciplinary offence, that is to say of a breach of sections 41, 47, 48, 49, 51, 52, 68 and 74 or of any of those sections read with sections 75 or 76, the officer having the power to order a court-martial may, if he considers the offence to be of such a character as not to necessitate trial by court-martial, in lieu of ordering a court-martial, order a disciplinary Court constituted as hereinafter mentioned.

#### **96. Constitution and procedure of disciplinary Courts.**

(1) A disciplinary Court shall be composed of not less than three nor more than five officers :

Provided that the majority of the officers including the president shall be officers of the executive branch of the naval service.

(2) At least one of these officers composing the Court shall be superior in rank to the officer under trial and in any case shall be of the rank of substantive or acting commander or of a higher rank.

(3) A disciplinary Court shall have power to impose any punishment inferior to detention in the scale hereinbefore contained, but no greater punishment.

(4) The officers composing the disciplinary Court shall be named by the authority ordering the same or by an officer empowered in this behalf by such authority.

(5) Subject to the provisions of the foregoing sub-sections, the procedure and practice of Courts-martial provided by or under this Act shall apply to the procedure and practice of disciplinary Courts subject to such modifications as may be prescribed.

## **97. Constitution of Courts-martial.**

(1) Courts-martial shall be constituted and convened subject to the provisions of the following sub-sections.

(2) The President, the Chief of the Naval Staff, or any officer empowered in this behalf by commission from the Chief of the Naval Staff shall have the power to order Courts-martial for the trial of offences under this Act.

(3) Unless otherwise prescribed in respect of any specified port or station, an officer holding a commission from the Chief of the Naval Staff to order Courts-martial shall not be empowered to do so if there is present at the place where such Court-martial is to be held an officer superior in rank to himself and in command of one or more of the ships of the Indian Navy : although such last mentioned officer may not hold a commission to order Court-martial and in such a case such last mentioned officer may order a Court-martial although he does not hold a commission for the purpose.

(4) If an officer holding a commission from the Chief of the Naval Staff to order Courts-martial, having the command of a fleet or squadron and being outside Indian waters die, be recalled, leave his station or be removed from his command, the officer upon whom the command of the fleet or squadron devolves and so from time to time the officer who shall have the command of the fleet or squadron, shall without any commission from the Chief of the Naval Staff have the same power to order Courts-martial as the first mentioned officer was invested with

(5) If an officer holding a commission from the Chief of the Naval Staff to order Courts-martial and having the command of any fleet or squadron of the Indian Navy outside Indian waters shall detach any part of such fleet or squadron, or separate himself from any part of such fleet or squadron he may by commission under his hand empower in the first mentioned case, the commanding officer of the squadron or detachment ordered on such separate service and in the case of his death or ceasing so to command, the officer to whom the command of such separate squadron or detachment shall belong, and in the second mentioned case, the senior officer of the ships of the Indian Navy on the division of the station from which he is absent, to order Courts-martial during the time of such separate service or during his absence from that division of the station as the case may be, and every such authority shall continue in force until revoked or until the officer holding it returns to India or until he comes into the presence of a superior officer empowered to order Courts-martial in the same squadron, detachment or division of station but so that such authority shall revive on the officer holding it ceasing to be in the presence of such a superior officer and so from time to time as often as the case so requires.

(6) A Court-martial shall consist of not less than five nor more than nine officers.

(7) No officer shall be qualified to sit as a member of a Court-martial unless—

(a) he is subject to naval law,

(b) he is an officer of the Indian Navy of the rank of lieutenant or higher rank, and

(c) he is of or over twenty-one years of age.

(8) A prosecutor shall not be qualified to sit on the Court-martial for the trial of the person he prosecutes.

(9) The officer ordering the Court-martial, the officer who was the commanding officer of the ship to which the accused belonged at the time of the commission of the alleged offence and the officer investigating the offence shall not be qualified to sit on a Court-martial for the trial of such accused.

(10) Subject to the provisions of sub-sections (7) to (9), officers of the Indian Navy shall be eligible to sit as members of a Court-martial irrespective of the branch of the naval service to which they belong :

Provided that—

- (a) the majority of the members of the Court-martial, including the President, shall be officers of the executive branch of the naval service, and
- (b) at trials for offences against sections 34, 35, 55 and 56, officers other than officers of the executive branch of the naval service shall not be eligible to sit.

(11) A Court-martial shall not be deemed to be duly constituted unless the members thereof are drawn from at least two ships not being tenders, and commanded by officers of the rank of lieutenant or higher rank.

(12) The President of a Court-martial shall be named by the authority ordering the same or by any officer empowered by such authority to name the President.

(13) No Court-martial for the trial of a flag officer shall be duly constituted unless the President is a flag officer and the other officers composing the Court are of the rank of captain or of higher rank.

(14) No Court-martial for the trial of a captain shall be duly constituted unless the President is a captain or of higher rank and the other officers composing the Court are commanders or officers of higher rank.

(15) No Court-martial for the trial of a commander shall be duly constituted unless the President is a commander or of higher rank and two other members are commanders or officers of higher rank.

(16) No Court-martial for the trial of a person below the rank of commander shall be duly constituted unless the President is a substantive or acting commander or of higher rank.

(17) No commander or lieutenant-commander or lieutenant shall be required to sit as a member of a Court-martial when four officers of higher rank and junior to the President can be assembled at the place where the Court-martial is to be held, but the regularity or validity of any Court-martial or of the proceedings thereof shall not be affected by any commander, lieutenant-commander or lieutenant being required to sit or sitting thereon under any circumstances and when any commander, lieutenant-commander or lieutenant sits on any Court-martial, the members of it shall not exceed five.

(18) Members of the Court-martial other than the President shall be appointed, subject to the provisions of the foregoing sub-sections, in the manner provided in sub-section (19).

(19) Subject to the provisions of sub-section (11), the President shall summon all officers except such as are exempted under the provisions of sub-section (20), next in seniority to himself present at the place where the Court-martial shall be held, to sit thereon until the number of nine or such other number not less than five as is attainable is complete.

(20) The officer convening the Court-martial or the senior naval officer present at the place where the Court-martial is to be held, may exempt by writing under his hand conveyed to the President of the Court-martial any officer from attending as member on ground of sickness or urgent public duty.

(21) In this section references to specified ranks of officer shall, unless otherwise stated, be deemed to be references to substantive ranks and to include references to equivalent ranks in all branches of the naval service.

(22) When the naval forces are on active service, officers of the Indian Navy Reserve Forces subject to naval law shall be eligible to sit as members of Courts-martial on the same basis and under the same conditions as officers of the Indian Navy.

## CHAPTER XIII PROCEDURE

### *Procedure of Courts-martial.*

#### **98. Where Courts-martial to be held.**

A Court-martial may be held ashore or afloat.

#### **99. Trial Judge advocate.**

(1) Every court-martial shall be attended by a person (in this Act referred to as the trial judge advocate) who shall be either a judge advocate in the department of the Judge Advocate General of the Navy or any fit person appointed by the convening officer:

Provided that in the case of a court-martial for the trial of a capital offence the trial judge advocate shall be a person nominated by the Judge Advocate General of the Navy unless such trial is held outside Indian waters.

(2) The trial judge advocate shall administer oath to every witness at the trial and shall perform such other duties as are provided in this Act and as may be prescribed.

#### **100. Courts-martial to be public.**

The place in which a court-martial is held for the purpose of trying an offence under this Act shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them :

Provided that, if the Court is satisfied that it is necessary or expedient in the public interest or for the ends of justice so to do, the Court may at any stage of the trial of any particular case order that the public generally or any portion thereof or any particular person shall not have access to, or be or remain in, the place in which the Court is held.

#### **101. Commencement of proceedings.**

(1) As soon as the Court has been assembled the accused shall be brought before it and the prosecutor, the person or persons, if any, defending the accused and the audience admitted.

(2) Except where the accused defends himself, he may be defended by such person or persons as may be prescribed.

(3) The trial judge advocate shall read out the warrant for assembling the Court and the names of officers who are exempted from attending under subsection (20) of section 97 together with the reasons for such exemption.

(4) The trial judge advocate shall read out the names of the officers composing the Court and shall ask the prosecutor whether he objects to any of them.

(5) If the prosecutor shall have made no objection or after any objection made by the prosecutor has been disposed of, the trial Judge advocate shall ask the accused if he objects to any member of the Court.

#### **102. Objections to members.**

The following provisions shall apply to the disposal of objections raised by the prosecutor as well as the accused :—

- (a) any member may be objected to on a ground which affects his competency to act as an impartial Judge; and the trial Judge advocate may reject summarily without reference to the members of the Court any objection not made on such ground;
- (b) objections to members shall be decided separately, those to the officer lowest in rank being taken first : provided that if the objection is to the President, such objection shall be decided first and all the other members whether objected to or not shall vote as to the disposal of the objection ;



- (c) on an objection being allowed by one-half or more of the officers entitled to decide the objection, the member objected to shall at once retire and his place shall be filled up before an objection against another member is taken up;
- (d) should the President be objected to and the objection be allowed, the Court shall adjourn until a new President has been appointed by the convening authority or by the officer empowered in this behalf by the convening authority; and
- (e) should a member be objected to on the ground of being summoned as a witness, and should it be found that the objection has been made in good faith and that the officer is to give evidence as to facts and not merely as to character, the objection shall be allowed.

### 103. Further objections.

(1) The trial Judge advocate shall then ask the accused whether he has any further objections to make respecting the constitution of the Court; and should the accused raise any such objection, it shall then be decided by the Court, which decision shall be final and the constitution of the court-martial shall not be afterwards impeached and it shall be deemed in all respects to have been duly constituted.

(2) If the accused should have no further objection to make to the constitution of the Court or if any objection is disallowed, the members and the trial Judge advocate shall then make an oath or affirmation in the form set out in section 104.

### 104. Administering oath or affirmation.

(1) Before the Court shall proceed to try the person charged, an oath or affirmation in the following form and manner shall be administered to the president and every member of the Court-martial in the order of their seniority by the trial Judge advocate:—

swear in the name of God

"I.....do —————

solemnly affirm

that I will duly and faithfully and to the best of my ability, knowledge and judgment administer justice according to law, without fear or favour, affection or ill-will, and that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this Court-martial unless thereunto required in due course of law."

(2) The trial Judge advocate shall then be sworn or affirmed by the president in the following form:—

swear in the name of God

"I.....do —————

solemnly affirm

that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office according to law, without fear or favour, affection or ill-will, and that I will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this Court-martial unless thereunto required in due course of law."

### 105. Arraignment.

(1) When the Court is ready to commence the trial, the trial Judge advocate shall read out the charges and shall ask the accused whether he pleads guilty or not guilty.

(2) If the accused pleads guilty, then, before such plea is recorded, the trial Judge advocate shall ensure that the accused understands the charge to which

he has pleaded guilty and the difference of procedure which will result from the plea of guilty.

(3) If it appears from the accused's replies or from the summary of evidence prepared in the prescribed manner that he should not plead guilty, the trial Judge advocate may advise the accused to withdraw his plea.

(4) If the Court accepts the plea of guilty, it shall be recorded as the finding of the Court and the Court shall proceed to take steps to pass sentence unless there are other charges to be tried in which event the sentence shall be deferred until after the findings on such charges are given.

**106. Opening of prosecution case.**

(1) If the accused pleads not guilty or refuses to, or does not, plead or if he claims to be tried or if in the circumstances mentioned in sub-section (3) of section 105 withdraws the plea of guilty or if the Court does not accept the plea of guilty, the Court shall proceed to try the accused.

(2) The prosecutor shall open his case by reading the circumstantial letter prepared in accordance with the regulations made under this Act, reading from this Act or the Indian Penal Code or other law the description of the offence charged and stating shortly by what evidence he expects to prove the guilt of the accused.

(3) The prosecutor shall then examine his witnesses.

**107. Calling of prosecution witness not in the original list.**

No witness whose name was not included in the original list of witnesses supplied to the trial judge advocate and the accused in accordance with regulations made under this Act shall be called by the prosecutor unless the trial judge advocate has given notice to the accused of the prosecutor's intention to call such witness and has supplied the accused with a summary of the evidence of such witness.

**108. Swearing of interpreter and shorthand-writer.**

(1) At any time during the trial, should the Court think it necessary, an impartial person may be employed to serve as an interpreter and sworn or affirmed as such in the following manner :—

"I.....do swear in the name of God  
solemnly affirm  
that I will to the best of my ability truly interpret and translate as I will be required to do touching the matter before this Court-martial."

(2) During the trial, an impartial person shall be employed as a shorthand-writer and duly sworn or affirmed as such in the following manner :—

"I.....do swear in the name of God  
solemnly affirm  
that I will truly take down to the best of my power the evidence to be given before this Court-martial and such other matters as I will be required, and when required, will deliver to the Court a true transcript of the same."

**109. Objection to interpreter or shorthand-writer.**

(1) Before any person is sworn or affirmed as an interpreter or a shorthand-writer, the accused shall be asked if he objects to such person as not being impartial and the Court shall decide the objection.

(2) The evidence given by a witness shall be read over to him by the shorthand-writer before the witness leaves the Court, if so required by the Court or the witness.

**110. Swearing of witnesses.**

(1) No witness shall be examined until he has been duly sworn or affirmed in the following manner :—

“I.....do swear in the name of God  
solemnly affirm  
that the evidence which I shall give before this Court shall be the truth,  
the whole truth and nothing but the truth.”.

(2) Every person giving evidence on oath or affirmation before a Court-martial shall be bound to state the truth.

**111. Plea of no case and defence of accused.**

(1) When the examination of the witnesses for the prosecution is concluded, the accused shall be called on for his defence.

(2) Before entering on his defence, the accused may raise a plea of no case to answer.

(3) If such a plea is raised, the Court will decide the plea after hearing the accused and the prosecutor and the advice of the trial judge advocate.

(4) If the Court accepts the plea, the accused shall be acquitted on the charge or charges in respect whereof the plea has been accepted.

(5) If the Court overrules the plea, the accused shall be called upon to enter on his defence.

(6) The trial judge advocate shall then inform the accused that he may give evidence as a witness on his own behalf should he desire to do so and should he make a request in writing to do so, but that he will thereby render himself liable to cross-examination.

(7) If the accused does not apply to give evidence, he may make a statement as to the facts of the case, and if he has no defence witnesses to examine as to facts, the prosecutor may sum up his case and the accused shall be entitled to reply.

(8) If the accused or any one of the several accused applies to give evidence and there are no other witnesses in the case for the defence, other than witnesses as to character, then the evidence of such accused shall be recorded and if the accused so desires the witnesses as to character shall be examined and the prosecutor shall then sum up his case and the accused may reply.

(9) If the accused or any one of the accused adduces any oral evidence as to facts other than his own evidence, if any, the accused may then sum up his case on the conclusion of that evidence and the prosecutor shall be entitled to reply.

**112. Adjournment to view.**

(1) Whenever the Court thinks that it should view the place in which the offence charged is alleged to have been committed or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect and may then adjourn to the place to be viewed, along with the prosecutor and the accused and the person, if any, by whom the accused is represented.

(2) The Court on completion of the view shall adjourn and re-assemble in the Court room.

**113. Summing up by the trial judge advocate.**

When the case for the defence and the prosecutor's reply, if any, are concluded, the trial judge advocate shall proceed to sum up in open Court the evidence for the prosecution and the defence and lay down the law by which the Court is to be guided.

**114. Duties of the trial judge advocate.**

(1) At all trials by Courts-martial it is the duty of the trial judge advocate to decide all questions of law arising in the course of the trial, and specially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of the questions asked by or on behalf of the parties; and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties.

(2) Whenever in the course of a trial it appears desirable to the trial judge advocate that arguments and evidence as to the admissibility of evidence or arguments in support of an application for separate trials or on any other points of law should not be heard in the presence of the Court, he may advise the President of the Court accordingly and the President shall thereupon make an order for the Court to retire or direct the trial judge advocate to hear the arguments in some other convenient place.

**115. Duties of the Court.**

It is the duty of the Court to decide which view of the facts is true and then arrive at the finding which under such view ought to be arrived at.

**116. Retirement to consider finding.**

(1) After the trial judge advocate has finished his summing up, the Court will be cleared to consider the finding.

(2) The trial judge advocate shall not sit with the Court when the Court is considering the finding, and no person shall speak to or hold any communication with the Court while the Court is considering the finding.

**117. Announcement of the finding.**

(1) When the Court has considered the finding, the Court shall be re-assembled and the President shall inform the trial judge advocate in open Court what is the finding of the Court as ascertained in accordance with section 124.

(2) The Court shall give its findings on all the charges on which the accused is tried.

**118. Drawing up of the finding.**

(1) The trial judge advocate shall then draw up the finding as announced by the Court.

(2) The finding so drawn up shall be signed by all the members of the Court by way of attestation notwithstanding any difference of opinion there may have been among the members and shall be countersigned by the trial judge advocate.

(3) Where the finding on any charge is one of not guilty the Court shall acquit the accused of that charge.

(4) If the accused is acquitted of all the charges, the Court shall, after signing the findings as provided in sub-section (2), be dissolved.

(5) Neither the Court nor the trial judge advocate shall announce in open Court whether the finding was unanimous or not; but the president shall make a record of the division of voting on each finding without disclosing the vote or opinion of any particular member of the Court-martial and such record shall be communicated to the trial judge advocate for transmission to the Judge Advocate General of the Navy.

**119. Evidence of character and previous convictions.**

(1) If the accused is found guilty on any or all of the charges, the Court before awarding punishment may call evidence as to the previous character and qualifications of the accused and in addition to any oral evidence of general character that may be adduced, shall take into consideration the

following documents which shall be read by the trial judge advocate in open Court :—

(a) for any officer—

- (i) any entries against him relating to his previous convictions in the list of officers who have been tried by Court-martial ; and
- (ii) any previous entries against him in the log of the ship to which he may have belonged when the offence or offences for which he is being tried were committed and also any documents, other than such entries in the log, of the nature of a definite censure by superior authority, which log and documents the prosecution is to produce ; and
- (iii) any certificate or other documents of character which the accused may produce ;

(b) for a seaman—

- (i) the entries against him in the conduct and offences record sheets prior to the date of the offence charged, but subsequent to his joining his present ship, with character assessed from the previous 31st day of December to the date of the offence for which he may be under trial but excluding all consideration of the latter ;
- (ii) his certificate of service ; and
- (iii) any entries against him relating to his previous convictions in the list of those who have been tried by Court-martial.

(2) The accused may then make a statement in mitigation of punishment and lead any evidence of character if he has not already done so before the finding.

## 120. Consideration of the sentence.

(1) The Court shall then retire and consider and determine on the punishment proper to be inflicted in conformity with the finding, and all the members of the Court, whether they have voted for an acquittal or not, shall vote on the question of what punishment is proper to be awarded for the offence of which the accused has been found guilty.

(2) The trial judge advocate shall sit with the Court while they are considering the sentence and assist the Court in the determination of the sentence but shall not vote thereon.

## 121. Announcement of the sentence.

(1) When the Court has decided on the sentence whether unanimously or by majority, the trial judge advocate shall draw up the sentence in the prescribed form which shall be signed by every member of the Court by way of attestation notwithstanding any difference of opinion there may have been among the members and shall be countersigned by the trial judge advocate.

(2) The Court shall then be re-assembled and the accused brought in and the trial judge advocate shall by direction of the Court pronounce the sentence.

(3) The accused shall then be removed and the Court dissolved.

## 122. Adjournment.

(1) A Court-martial may, if it appears to the Court that an adjournment is desirable, be adjourned accordingly, but except where such an adjournment is ordered, shall sit from day to day with the exception of Sundays until the trial is concluded, unless prevented from so doing by stress of weather or unavoidable accident.

### Section 122 — Note 1

[1] The word "trial" is well understood in criminal law and it ends when the proceedings in the trial Court come to an end — The various provisions of the Navy Act also show

that the word "trial" is used in the same sense in that Act. 1900 Bom 502 (510) [A I R V 47 C 155] : 1900 Cri L Jour 1558 (FB).

(2) The proceedings of a Court-martial shall not, after the commencement of a trial, be delayed by the absence of a member :

Provided that not less than four members are present ; and

Provided further that if any member is absent from any part of the trial, he shall not thereafter take any part in the proceedings.

### **123. Provisions relating to dissolution of Courts-martial.**

(1) A Court-martial assembled under this Act shall be dissolved—

(a) when the number of members comprising the Court is after the commencement of a trial reduced below four ;

(b) by the prolonged illness of the President, trial judge advocate or the accused ;

(c) by the death of the President or the trial judge advocate ;

(d) on the making of a report under sub-section (2) of section 143.

(2) Whenever a Court-martial is dissolved by virtue of sub-section (1), the accused may be retried.

### **124. Ascertaining the opinion of the Court.**

(1) Subject to the provisions of sub-sections (2) and (3), every question for determination by a Court-martial shall be decided by the vote of the majority :

Provided that where there is an equality of votes, the decision most favourable to the accused shall prevail.

(2) The sentence of death shall not be passed on any offender unless four at least of the members present at the court-martial where the number does not exceed five, and in all other cases a majority of not less than two-thirds of the members present, concur in the sentence.

(3) Where in respect of an offence, the only punishment which may be awarded is death, a finding that a charge for such offence is proved shall not be given unless four at least of the members present at the court-martial where the number does not exceed five, and in all other cases a majority of not less than two-thirds of the members present, concur in the finding.

### **125. Finding that the offence was committed with intent involving less degree of punishment.**

Where the amount of punishment for any offence depends upon the intent with which it has been committed and any person is charged with having committed such an offence with an intent involving a greater degree of punishment, a Court-martial may find that the offence was committed with an intent involving less degree of punishment and award such punishment accordingly.

### **126. Alternative findings.**

If the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under section 91, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

### **127. Finding lesser offence proved on charge of greater offence.**

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

#### **Section 123 — Note 1**

[1] The word "trial" is well understood in criminal law and it ends when the proceedings in trial Court come to an end. The various provisions of the Navy Act also show that

the word "trial" is used in the same sense in that Act. 1960 Bom 502 (510) [AIR V 47 C 135] : 1960 Cri L Jour 1558 (FB).

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such an offence, although the attempt is not separately charged.

## **128. Transmission of proceedings to the Judge Advocate General of the Navy.**

The trial Judge advocate shall transmit in accordance with the prescribed procedure with as much expedition as may be, the original proceedings or a complete and authenticated copy thereof and the original sentence of every Court-martial attended by him, to the Judge Advocate General of the Navy to be dealt with by him in accordance with the provisions of Chapter XV.

## **129. Right of accused to copy of proceedings and sentence.**

Every person tried by a Court-martial and convicted shall be entitled on demand to one copy of the proceedings and sentence of such Court-martial free of cost but no such demand shall be allowed after the lapse of one year from the date of the final decision of such Court.

### **RULES AS TO EVIDENCE**

## **130. Application of the Evidence Act.**

Subject to the provisions of this Act, the Indian Evidence Act, 1872, shall apply to all proceedings before a Court-martial.

## **131. Accused competent witness for defence.**

A person accused of an offence before a Court-martial shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial :

Provided that —

- (a) he shall not be called as a witness except on his own request in writing; or
- (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

## **132. Judicial notice.**

A Court-martial may take judicial notice of any matter within the general naval, army or air force experience and knowledge of the members.

## **133. Presumptions as to certain documents.**

(1) Whenever it is necessary for the purposes of either the prosecution or the defence to prove the contents of any voucher, receipt, account, muster, ship's book, letter, signal, telegram or other document made or kept in pursuance of any Act of the Legislature, any regulations framed under this Act or of the custom of the service, a copy of the same purporting to be signed and certified as a correct copy by the officer for the time being commanding the ship in which the same was made or kept or by a Secretary to the Central Government, may be received as evidence of such document and of the matters, transactions and accounts therein recorded.

(2) A Navy List or Gazette or other official document purporting to be published by authority of the Central Government or the Chief of the Naval Staff shall be evidence of the status and rank of officers therein mentioned and of any appointment held by such officers until the contrary is proved.

(3) Where it is shown that a person is borne on the books of a ship of the Indian Navy, such fact shall be evidence that such person is subject to naval law until the contrary is proved.

*Explanation.* — In this section, the term “books of a ship” shall include any official book, document or list purporting to contain the name or names of person appointed to the ship.

(4) Where any person subject to naval law is being tried on a charge of desertion, improperly leaving his ship, or absence without leave and such person has surrendered himself into custody of or has been apprehended by any person subject to naval law or by a person subject to the law relating to the government of the regular Army or the Air Force, a certificate purporting to be signed by such person and stating the fact, date and place of such surrender or apprehension shall be evidence of the matters so stated unless the contrary is proved.

(5) Where any person subject to naval law is being tried on a charge of desertion, improperly leaving his ship, or absence without leave and such person has on arrest or surrender been taken to a police station, a certificate purporting to be signed by the officer-in-charge of the station and stating the fact, date and place of such surrender or apprehension shall be evidence of the matters stated unless the contrary is proved.

(6) Any document purporting to be a report under the hand of any chemical examiner or assistant chemical examiner to Government upon any matter or thing duly submitted to him for examination or analysis may be used as evidence in any proceeding under this Act.

(7) The statement of a naval, army or air force medical officer taken and attested by the commanding officer of a ship or establishment may be given in evidence in any proceeding under this Act:

Provided that the Court may, if it thinks fit, and shall if so required by the prosecutor or the accused, summon and examine such medical officer as to the subject-matter of his statement.

(8) If it is proved that an offender under this Act has absconded and that there is no immediate prospect of arresting him, the commanding officer or other prescribed person may, in his absence, examine any persons who might appear to him to be acquainted with the case and record their depositions on oath and any such deposition may on the arrest of such person be used in evidence against him in any proceeding under this Act, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable.

### **134. Summoning of witnesses.**

(1) Every person who may be required to give evidence or produce a document before a Court-martial shall be summoned in the prescribed manner in writing under the hand of the Judge Advocate General of the Navy or the trial judge advocate.

(2) Every person who may be required to give evidence before a commanding officer or the officer preparing a summary of evidence in accordance with the regulations made under this Act or before a board of inquiry shall be summoned in the prescribed manner by writing under the hand of the Judge Advocate General of the Navy or the senior officer in the station or such other officer prescribed in this behalf.

(3) In the case of a witness subject to naval law or to the law relating to the Government of the regular Army or the Air Force, the summons shall be served in the manner prescribed.

(4) In the case of any other witness, the summons shall be served either in the prescribed manner, or it shall be sent to the Magistrate within whose



jurisdiction the witness may be or resides and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

(5) When a witness is required to produce any particular document or thing in his possession or power, the summons shall describe it with reasonable precision.

(6) Every person not subject to naval law who may be summoned as aforesaid shall be allowed and paid such reasonable expenses as may be prescribed.

(7) Nothing in this section shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872,\* or to apply to any document in the custody of the postal or telegraph authorities.

[a] These provisions of the Evidence Act, 1872, are as follows —

"123. *Evidence as to affairs of State.*—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. *Official communications.*—No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure."

### 135. Commissions for examination of witnesses.

(1) Whenever in the course of a trial by Court-martial, it appears to the trial judge advocate that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, the trial judge advocate may dispense with such attendance and may apply to the Judge Advocate General of the Navy to issue a commission to any District Magistrate or Magistrate of the first class within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) The trial in such an event may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

(3) The Judge Advocate General of the Navy on receipt of an application under sub-section (1) may, if he thinks fit, issue a commission to the District Magistrate or Magistrate of the first class or an authority exercising in that place powers equivalent to those of a Magistrate of the first class under the Code of Criminal Procedure, 1898, for the examination of the witness.

(4) The Magistrate or authority to whom the commission is issued or if he is a District Magistrate he or such Magistrate of the first class as is appointed by him in this behalf shall proceed to such place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner and may for this purpose exercise the same powers as in trials of warrant cases under the Code of Criminal Procedure, 1898, or of any corresponding law in force at the place where the evidence is recorded.

### 136. Examination of witnesses on commission.

(1) Where a commission is issued under the provisions of section 135, the prosecutor and the accused may respectively forward any interrogatories in writing which the trial judge advocate may think relevant to the issue and the Magistrate or authority to whom the commission is directed or to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused may appear before such Magistrate or authority by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 135 has been duly executed, it shall be returned together with the deposition of the witness examined thereunder to the Judge Advocate General of the Navy who issued the commission.

(4) On receipt of the commission and the deposition returned under subsection (3), the Judge Advocate General of the Navy shall forward the same to the trial judge advocate at whose instance the commission was issued.

(5) The commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused and may subject to all just exceptions be read in evidence in the case by either the prosecutor or the accused and shall form part of the proceedings of the trial.

(6) Any deposition so taken shall be received in evidence at any subsequent stage of the trial whether before the same Court or, if the said Court is dissolved meanwhile, before another Court convened for the trial of the accused in respect of the same charges.

### **137. Power to summon and examine material witnesses.**

(1) The trial judge advocate may, at any stage of the trial, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the trial judge advocate shall summon and examine or recall and re-examine any such person if his evidence appears to the Court or to the trial judge advocate as essential to the just decision of the case.

(2) Summons to the witnesses shall be issued as provided under this Act.

#### *Compensation to aggrieved persons out of fine*

### **138. Power of Court to pay compensation out of fine.**

(1) Whenever a Court-martial imposes a fine as a punishment, the Court may when passing judgment order the whole or any part of the fine recovered to be applied,—

(a) in the payment to any person aggrieved as compensation for any loss or injury caused by the offence;

(b) when any person is convicted of any civil offence which includes theft, criminal misappropriation, criminal breach of trust or cheating or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen property,\* in compensating any *bona fide* purchaser of the property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) No such payment or compensation shall, however, be made before the expiry of fifteen days from the date of the sentence, and when a petition is presented against the conviction or sentence until the said petition is disposed of.

[a] See section 3 (25) of this Act. The relevant provisions of the Indian Penal Code, 1860, giving the meanings respectively assigned to the offences mentioned in this section are: Sections 378 (theft), 403 (Criminal misappropriation), 405 (Criminal breach of trust), 415 (Cheating), 411 (Dishonestly receiving or retaining stolen property) and 414 (Voluntarily assisting in disposing of stolen property).

#### *Power of Courts-martial respecting contempt, etc.*

### **139. Summary punishment for contempt of Court by person subject to naval law.**

When any person subject to naval law commits any offence as is described in section 69 in the presence of or in relation to a proceeding before a Court-martial such Court-martial may punish the offender summarily by imprisonment for a term which may extend to three months or such other less punishment as may be awarded for that offence under section 69.

# **140. Summary punishment for contempt of Court by person not subject to naval law.**

When any person not subject to naval law commits an offence as is described in section 165 in the presence of a Court-martial, such Court-martial may take such person into custody and at any time before the rising of the Court on the same day, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees or in default of payment to simple imprisonment for a term which may extend to one month, unless such fine shall be sooner paid.

# **141. Powers of Court-martial when certain offences are committed by persons not subject to naval law.**

When any such offence as is described in section 165 of this Act or section 193, section 194, section 195, section 196, section 199, section 200, section 228, section 463 or section 471 of the Indian Penal Code\* is committed by any person not subject to naval law in or in relation to a proceeding before a Court-martial, such Court-martial or the officer ordering the same if such Court-martial is dissolved, may exercise the powers under section 476 of the Code of Criminal Procedure, 1898, as if it or he were a Criminal Court within the meaning of that section.

[a] The offences described in the sections of the Indian Penal Code mentioned in this section are : S. 193—Punishment for false evidence; S. 194—Giving or fabricating false evidence with intent to procure conviction—capital offence; if innocent person be thereby convicted and executed, S. 195—Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life; S. 196—Using evidence known to be false; S. 199—False statement made in declaration which is by law receivable as evidence; S. 200—Using as true such declaration knowing it to be false; S. 228—Intentional insult or interruption to public servant sitting in judicial proceeding; S. 463—Forgery; S. 471—Using as genuine a forged document.

# **142. Powers of Courts-martial and disciplinary Courts in relation to proceedings under this Act.**

Any trial by a Court-martial or disciplinary Court under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code,\* and the Court-martial or disciplinary Court shall be deemed to be a Court within the meaning of sections 450 and 452 of the Code of Criminal Procedure, 1898.

[1] See Foot-note 'a' under section 141.

## *Lunacy of accused*

# **143. Accused found insane during trial.**

(1) Where it appears in the course of the trial by Court-martial of any person charged with an offence that such person is insane, the Court shall find specially the fact of his insanity and shall order such person to be kept in strict custody in such place and in such manner as the Court may deem fit until the directions of the Central Government thereupon are known.

(2) Every such case shall be reported by the Court to the convening authority for orders of the Central Government and it shall be lawful for the Central Government to give orders for the safe custody of such person in such place and in such manner as the Central Government may deem fit.

(3) Whenever on the receipt of a report from the Central Government or otherwise the convening authority considers that such person is capable of making his defence, the convening authority may take steps to convene a Court-martial for the trial of such person.

# **144. Lunacy of the accused at the time of offence.**

(1) Whenever any person subject to naval law is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act

alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall specifically state whether he committed the act or not.

(2) Whenever the finding made under sub-section (1) states that the accused person committed the act alleged, the Court-martial shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and in such manner as may be prescribed and shall report the action taken to the officer convening the Court.

(3) The officer convening the Court shall then report the case for the orders of the Central Government and shall take necessary steps to detain the said person in safe custody pending receipt of such orders.

(4) The Central Government may on receipt of a report under sub-section (3) order the accused person to be detained in a mental hospital or other suitable place of safe custody.

#### *Disposal of Property*

#### **145. Disposal of property pending trial.**

When any property regarding which an offence appears to have been committed or which appears to have been used for the commission of an offence is produced before a Court-martial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial and if the property is subject to speedy or natural decay may after recording such evidence as it thinks necessary order it to be sold or otherwise disposed of.

#### **146. Disposal of property regarding which offence is committed.**

(1) When the trial before any Court-martial is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which an offence appears to have been committed or which has been used for the commission of any offence :

Provided that except in the case of property which is subject to speedy or natural decay such property or document shall, if so required by regulations, made under this Act, be kept in custody until the orders of the Chief of the Naval Staff are known.

(2) An order under sub-section (1) shall not be carried out for one month, unless the property is subject to speedy or natural decay.

(3) When an order under this section cannot be conveniently carried out by persons in the naval service, a copy of such order certified by the Chief of the Naval Staff or an officer prescribed in this behalf, may be sent to a Magistrate within whose jurisdiction the property is for the time being situate and such Magistrate shall thereupon take steps to cause the order to be carried into effect as if it were an order passed by him.

*Explanation.* — In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

#### **Section 146 — Note 1**

[1] The word “trial” is well understood in criminal law and it ends when the proceedings in the trial Court come to an end. The various provisions of the Navy Act also show

that the word “trial” is used in the same sense in that Act. 1960 Bom 502 (510) [AIR V 47 C 135]; 1960 Cri L Jour 1558 (FB).

## CHAPTER XIV

### EXECUTION OF SENTENCES

#### 147. Form of sentence of death.

In awarding a sentence of death, a Court-martial shall in its discretion direct that the offender shall suffer death by being hanged by the neck until he be dead or shall suffer death by being shot to death.

#### 148. Interim custody until execution of sentence of death.

A person sentenced to death may be detained in naval custody or may be removed to a civil prison to be kept in custody until further orders be received from the Central Government, the Chief of the Naval Staff or the officer ordering the Court-martial by which he was sentenced to death or other prescribed officer and the order in the prescribed form of the Central Government, the Chief of the Naval Staff or the convening authority or such officer shall be sufficient warrant for detaining the person in custody.

#### 149. Execution of sentences of death.

(1) When a sentence of death is to be executed the Chief of the Naval Staff or the convening authority or the prescribed officer shall give directions as to the time, place and manner in which sentence is to be carried out and the order of such officer or authority in the prescribed form shall be sufficient warrant for the execution of such sentence.

(2) There shall be attached to the prescribed form an order of the Central Government certifying the confirmation of the sentence by the Central Government in all cases where such confirmation is necessary; and where such confirmation is not necessary, a certificate of the Chief of the Naval Staff or other prescribed officer stating that such confirmation is not necessary.

#### 150. Place of imprisonment and detention.

(1) Every term of imprisonment whether imprisonment was awarded as an original or commuted punishment may be served in a naval prison, naval detention quarters or in any civil prison, house of correction or military or air force prison or detention barracks.

(2) Every term of detention whether the detention was awarded as an original or commuted punishment may be served in any naval detention quarters or army or air force detention barracks.

(3) Where in pursuance of this Act, a person is sentenced to imprisonment or detention or has his sentence commuted to imprisonment or detention, the order in the prescribed form of the Central Government or the Chief of the Naval Staff or the officer ordering the Court-martial by which such person was sentenced or the senior officer present in port or, if he was sentenced by the commanding officer of a ship, or other officer empowered under this Act to exercise like powers, the order in the prescribed form of such commanding officer or other officer, shall be a sufficient warrant for the sending of such person to the place of imprisonment or detention, as the case may be, there to undergo the sentence according to law, or until he reaches such place of imprisonment or detention for detaining him in naval custody or in the case of a person sentenced to imprisonment, in any civil prison or place of confinement.

#### 151. Commencement of sentence.

(1) Subject to the provisions of sub-section (2) every term of imprisonment or detention awarded in pursuance of this Act shall be reckoned as commencing on the day on which the sentence was awarded.

(2) Where by reason of a ship being at sea or off a place at which there is no proper prison or naval detention quarters, a sentence of imprisonment or detention, as the case may be, cannot be duly executed, then subject as hereinafter mentioned, an offender under the sentence of imprisonment or detention, as

the case may be, may be sent with all reasonable speed to some place at which there is a proper prison or naval detention quarters or in the case of an offender under sentence of detention to some place at which there are some naval detention quarters in which the sentence can be duly executed; and on arrival there, the offender shall undergo his sentence in like manner as if the date of such arrival were the day on which the sentence was awarded and notwithstanding that in the meanwhile he has returned to his duty or become entitled to his discharge; and the term of imprisonment or detention, as the case may be, shall be reckoned accordingly, subject however to the deduction of any time during which he has been kept in confinement in respect of the said offence.

### **152. Imprisonment of offender already under sentence.**

Whenever a sentence shall be passed by a Court-martial on an offender already under sentence either of detention or imprisonment passed upon him under this Act for a former offence, the Court may award a sentence of detention or imprisonment for the offence for which he is under trial to commence at the expiration of the sentence of detention or imprisonment to which he has been previously sentenced :

Provided that so much of any term of detention imposed on a person by a sentence in pursuance of this section as will prolong the total term of detention beyond two years shall be deemed to be remitted.

### **153. Change of place of confinement.**

Whenever it is deemed expedient, it shall be lawful for the Central Government, the Chief of the Naval Staff or senior officer present, by an order in writing in the prescribed form, from time to time to change the place of confinement of any offender imprisoned or sentenced to be imprisoned or detained in pursuance of this Act or of any offender undergoing or sentenced to undergo detention; and the gaoler or other person having the custody of such offender shall immediately on the receipt of such order remove such offender to the gaol, prison or house of correction or, in the case of an offender undergoing or sentenced to undergo detention, to the naval detention quarters mentioned in the said order, or shall deliver him over to naval custody for the purpose of the offender being removed to such prison or naval detention quarters, and every gaoler or keeper of such last-mentioned prison, gaol, or house of correction or naval detention quarters shall, upon being furnished with such order of removal, receive into his custody and shall confine pursuant to such sentence or order every such offender.

### **154. Discharge or removal of prisoners.**

Whenever any offender is undergoing imprisonment or detention in pursuance of this Act, it shall be lawful for the Central Government or the Chief of the Naval Staff, or where an offender is undergoing imprisonment or detention by order of his commanding officer, for such commanding officer or the Central Government or the Chief of the Naval Staff, to give an order in writing in the prescribed form directing that the offender be discharged; and it shall also be lawful for the Central Government and the Chief of the Naval Staff, by order in writing in the prescribed form, to direct that any such offender be delivered over to naval custody for the purpose of being brought before a Court-martial, either as a witness or for trial or otherwise, and such offender shall accordingly, on the production of any such order, be discharged, or be delivered over to such custody.

### **155. Time of detention in naval custody.**

The time during which any offender under sentence of imprisonment or detention is detained in naval custody shall be reckoned as imprisonment or detention under his sentence for whatever purpose he is so detained; and the governor, gaoler, keeper or superintendent who shall deliver over any such

offender shall again receive him from naval custody, so that he may undergo the remainder of his punishment.

### **156. Removal of insane prisoners.**

If any person imprisoned or undergoing detention by virtue of this Act shall become insane, and a certificate to that effect shall be given by two physicians or surgeons, the Central Government shall, by warrant in the prescribed form, direct the removal of such person to such asylum or other proper receptacle for insane persons in India as it may judge proper for the unexpired term of his imprisonment or detention; and if any such person shall in the same manner be certified to be again of sound mind, the Central Government may issue a warrant in the prescribed form for his being removed to such prison or place of confinement or in the case of a person sentenced to detention, such naval detention quarters as may be deemed expedient, to undergo the remainder of his punishment, and every gaoler or keeper of any prison, gaol, or house of correction shall receive him accordingly.

### **157. Naval prisons and naval detention quarters.**

The Central Government may set apart any buildings or vessels or any parts thereof as naval prisons or naval detention quarters and any buildings, vessels or parts of buildings or vessels so set apart as naval prisons or naval detention quarters, as the case may be, shall be deemed to be naval prisons or naval detention quarters respectively, within the meaning of this Act.

### **158. Execution of sentence of fine.**

When a sentence of fine is imposed under this Act by a Court-martial or disciplinary Court, the officer ordering the Court-martial or disciplinary Court may transmit a copy of the order imposing the fine duly certified under his hand to any Magistrate in India, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1895, or any law corresponding thereto in force in the State of Jammu and Kashmir as if it were a sentence of fine imposed by such Magistrate.

### **159. Power to make regulations in respect of naval prisons and detention quarters.**

(1) The Central Government may, by notification in the Official Gazette, make regulations providing,—

- (a) for the government, management and regulation of naval prisons and detention quarters;
- (b) for the appointment and removal and powers of inspectors, visitors and officers thereof;
- (c) for the food, bedding and clothing of prisoners or persons undergoing detention therein;
- (d) for the labour of such prisoners or persons therein and for enabling such prisoners or persons to earn by special industry and good conduct remission of a portion of their sentence; and
- (e) for the care of such prisoners or persons, their safe custody and the maintenance of good order and discipline among them and the punishment by personal correction, restraint or otherwise of offences committed by such prisoners or persons.

(2) The regulations to be made under this section may apply to naval prisons or detention quarters any of the provisions of the Prisons Act, 1894, and rules made thereunder, imposing punishments on any persons not being prisoners or relating to the duties of gaolers, medical officers and other officers of the prisons.

(3) The regulations to be made under this section shall not authorise corporal punishment to be inflicted for any offence.

## CHAPTER XV

## JUDICIAL REVIEW OF COURTS-MARTIAL PROCEEDINGS

**160.** Judicial review by the Judge Advocate General of the Navy.

(1) All proceedings of trials by Court-martial or by disciplinary Courts shall be reviewed by the Judge Advocate General of the Navy either on his own motion or on application made to him within the prescribed time by any person aggrieved by any sentence or finding, and the Judge Advocate General of the Navy shall transmit the report of such review together with such recommendations as may appear just and proper to the Chief of the Naval Staff for his consideration and for such action as the Chief of the Naval Staff may think fit.

(2) Where any person aggrieved has made an application under sub-section (1), the Judge Advocate General of the Navy may, if the circumstances of the case so require, give him an opportunity of being heard either in person or through a legal practitioner or an officer of the Indian Navy.

**161.** Consideration by the Chief of the Naval Staff.

(1) On receipt of the report and recommendations if any, under section 160, the Chief of the Naval Staff shall in all cases of capital sentence and in all cases where the Court-martial is ordered by the President, and may in other cases transmit the proceedings and the report to the Central Government together with such recommendations as he may deem fit to make.

(2) Nothing in section 160 or this section shall authorise the Judge Advocate General of the Navy or the Chief of the Naval Staff to make any recommendation for setting aside, or the Central Government to set aside, an order of acquittal passed under this Act.

## CHAPTER XVI

## MODIFICATIONS OF FINDINGS AND SENTENCES, PARDONS AND COMMUTATION, REMISSION AND SUSPENSION OF SENTENCES

**162.** Petitions to the Central Government or Chief of the Naval Staff against findings or sentences.

Any person subject to naval law who considers himself aggrieved by a finding or sentence of any Court-martial may present a petition to the Central Government or to the Chief of the Naval Staff, and the Central Government or the Chief of the Naval Staff, as the case may be, may pass such order thereon as may be thought fit.

**163.** Powers of Central Government and the Chief of the Naval Staff in respect of findings and sentences.

(1) Where any person is tried under the provisions of this Act, the Central Government or the Chief of the Naval Staff, may, in the case of a conviction,—

- (a) set aside the finding and sentence and acquit or discharge the accused or order him to be retried, or
- (b) alter the finding, maintaining the sentence (provided that such sentence may be legally passed on the altered finding), or
- (c) with or without altering the finding, reduce the sentence or commute the punishment awarded for any punishment inferior in scale, or
- (d) either with or without conditions, pardon the person or remit the whole or any part of the punishment awarded, or
- (e) either with or without conditions, release the person on parole :

Provided that a sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment awarded,



and a sentence of dismissal with disgrace not accompanied by a sentence of imprisonment shall not be commuted for a sentence of detention :

Provided further that nothing in this section shall authorise the Central Government or the Chief of the Naval Staff to enhance the sentence.

(2) Any sentence modified under the provisions of sub-section (1) shall be carried into execution as if it had been originally passed.

(3) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is in the opinion of the authority which granted the pardon, release or remission not fulfilled, such authority may cancel the pardon or release or remission and thereupon the sentence awarded shall be carried into effect as if such pardon, release or remission had not been granted :

Provided that in the case of a person sentenced to imprisonment or detention such person shall undergo only the unexpired portion of the sentence.

#### **164. Suspension of sentences.**

(1) Where a person has been sentenced to imprisonment or detention, the Central Government or the officer who by virtue of the foregoing section or sub-section (3) of section 150 has power to issue an order of committal (hereinafter in this section referred to as "the committing authority") may, in lieu of issuing such an order, order that the sentence be suspended until an order of committal is issued, and in such case --

- (a) notwithstanding anything in this Act, the term of the sentence shall not be reckoned as commencing until an order of committal is issued ;
- (b) the case may at any time, and shall at intervals of not more than three months, be reconsidered by the Central Government or committing authority or the prescribed officer, and if on any such reconsideration it appears to the Central Government or committing authority or such prescribed officer that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, the Central Government or committing authority or such prescribed officer shall remit the whole or any part of it ;
- (c) subject to regulations made under this Act, the Central Government or the committing authority or such prescribed officer may at any time whilst the sentence is suspended issue an order of committal and thereupon the sentence shall cease to be suspended ;
- (d) where a person subject to naval law, whilst a sentence on him is so suspended, is sentenced to imprisonment or detention for any other offence then, if he is at any time committed either under the suspended sentence or under any such subsequent sentence, and whether or not any such subsequent sentence has also been suspended, the committing authority may direct that the two sentences shall run either concurrently or consecutively, so, however, as not to cause a person to undergo detention for a period exceeding the aggregate of two consecutive years.

(2) When a person has been sentenced to imprisonment or detention and an order of committal has been issued, the Central Government or the committing authority, or prescribed officer may order the sentence to be suspended, and in such cases the person whose sentence is suspended shall be discharged and the currency of the sentence shall be suspended until he is again committed under the same sentence, and the provisions of clauses (b), (c) and (d) of sub-section (1), shall apply in like manner as in the case where a sentence has been suspended before an order of committal has been issued.

(3) Where a sentence is suspended under this section, whether before or after committal, the Central Government or, subject to regulations made under this Act, the committing authority or officer by whom the sentence is suspended

may, direct that any penalty which is involved by the punishment of imprisonment or detention either shall be or shall not be remitted or suspended.

## CHAPTER XVII

### OFFENCES IN RELATION TO COURTS-MARTIAL, DISCIPLINARY COURTS AND PRISONS

#### **165. Offences by persons not subject to naval law in relation to Courts-martial and disciplinary Court.**

Every person not subject to naval law, who,—

- (a) being duly summoned or ordered to attend as a witness before a Court-martial or disciplinary Court fails to attend without due cause, or
- (b) refuses to take an oath or make an affirmation legally required by a Court-martial or disciplinary Court to be taken or made, or
- (c) being sworn or affirmed, refuses to answer any questions put by or before a Court-martial or disciplinary Court, which he is in law bound to answer, or
- (d) refuses to produce or deliver up a document in his power which the Court-martial or disciplinary Court may legally demand, or
- (e) is guilty of contempt of Court-martial or disciplinary Court,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

#### **166. Penalties for aiding escape or attempt to escape of prisoners and for breach of prison regulations.**

(1) Every person, who,—

- (a) conveys or causes to be conveyed into any naval prison or naval detention quarters any arms, tools, or instruments, or any mask or other disguise to facilitate the escape of any prisoner or person undergoing detention, or
- (b) by any means whatever aids any prisoner or person undergoing detention to escape or in an attempt to escape from such prison or naval detention quarters, whether an escape be actually made or not,

shall be punished with imprisonment for a term which may extend to fourteen years.

(2) Every person who brings or attempts to bring into a naval prison or naval detention quarters, in contravention of regulations made under this Act, any spirituous or fermented liquor, shall for every such offence be punished with a fine not exceeding two hundred rupees and not less than one hundred rupees.

(3) Every person, who,—

- (a) brings into a naval prison or naval detention quarters or to or for any prisoner or person undergoing detention, without the knowledge of the officer having charge or command thereof, any money, clothing, provisions, tobacco, letters, papers, or other articles not allowed by the rules of the prison or naval detention quarters, to be in the possession of a prisoner or person undergoing detention, or
- (b) throws into the said prison or naval detention quarters, any such articles, or by desire of any prisoner or person undergoing detention, without the sanction of the said officer carries out of the prison or naval detention quarters any of the articles aforesaid,

shall for every such offence be punished with a fine not exceeding two hundred rupees.

(4) Every person, who,—

(a) interrupts any officer of a naval prison or naval detention quarters in the execution of his duty, or

(b) aids or abets any person to assault, resist, or interrupt any such officer, shall for every such offence be punished with imprisonment which may extend to two years, or with fine, or both.

(5) Every fine recovered under, the foregoing sub-sections of this section shall be applied as the Central Government may direct notwithstanding any law, charter, or custom to the contrary.

### **167. Penalty as regards gaolers, etc.**

Every governor, gaoler, and keeper of any prison, goal, or house of correction or of any naval detention quarters, and every person having the charge of command of any place, ship, or vessel for imprisonment, who shall without lawful excuse, refuse or neglect to receive or confine, remove, discharge, or deliver up any offender against the provisions of this Act, or any of them, shall incur for every such refusal or neglect a penalty not exceeding one thousand rupees and every such penalty shall be applied as the Central Government may direct notwithstanding any law, charter, or custom to the contrary.

## CHAPTER XVIII

### JUDGE ADVOCATE GENERAL OF THE NAVY AND OFFICERS OF HIS DEPARTMENT

### **168. Appointment of the Judge Advocate General of the Navy and his subordinate officers.**

(1) There shall be appointed by the Central Government a Judge Advocate General of the Navy and as many judge advocates in the department of the Judge Advocate General of the Navy as the Central Government may deem necessary.

(2) Out of the judge advocates so appointed, the Central Government may designate any one to be the Deputy Judge Advocate General of the Navy.

(3) A person shall not be qualified for appointment as Judge Advocate General of the Navy unless he—

(a) is a citizen of India, and

(b) has for at least ten years held a judicial office in the territory of India, or

(c) has for at least ten years been an advocate of a High Court or two or more such Courts in succession.

(4) A person shall not be qualified for appointment as Deputy Judge Advocate General of the Navy unless he—

(a) is a citizen of India, and

(b) has for at least seven years held a judicial office in the territory of India, or

(c) has for at least seven years been an advocate of a High Court or two or more such Courts in succession.

#### **Section 167 — Note 1**

[1] The accused, subject to navy law, was convicted for murder by an ordinary criminal Court and sentenced to imprisonment for life. After the judgment was pronounced, the accused made an application for leave to appeal to the Supreme Court. Before the warrant issued for the arrest of the accused who was in naval custody, could be executed the Governor issued an order under Art. 161 of the Constitution suspending the sentence subject to the condition that the accused was to

remain in naval custody till the disposal of the appeal to the Supreme Court. *Held* that the pith and substance of the condition was that the accused should remain in custody and not the mode or manner of that custody. Hence the Governor's order was not unconstitutional and invalid because it contemplated the detention of the accused in a naval jail which detention was not expressly authorised by law (Navy Act). 1960 Bom 302 (511, 512) [AIR V 47 C 135] : 1960 Cri L Jour 1558 (FB).

(5) A person shall not be qualified for appointment as a judge advocate unless he—

- (a) is a citizen of India, and
- (b) is qualified for enrolment as an advocate or a pleader of a High Court.

*Explanation.*—For the purposes of this section,

- (a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate;
- (b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of the Constitution during which he has held judicial office in any area which was comprised before the 15th day of August, 1947, within India as defined in the Government of India Act, 1935, or has practised as an advocate of any High Court in any such area as the case may be;
- (c) the expression “judicial office” shall be deemed to include the office of the Judge Advocate of the Fleet or any of his deputies or assistants and any other legal or judicial office in the department of the Judge Advocate of the Fleet held before the commencement of this Act, and the office of the Judge Advocate General of the Navy or of a judge advocate held after the commencement of this Act.

### **169. Functions of the Judge Advocate General of the Navy.**

It shall be the duty of the Judge Advocate General of the Navy to perform such duties of a legal and judicial character pertaining to the Indian Navy as may from time to time be referred or assigned to him by the Central Government or the Chief of the Naval Staff, and to discharge the functions conferred on him by or under this Act or any other law for the time being in force.

### **170. Discharge of functions of the Judge Advocate General of the Navy in his absence.**

The functions of the Judge Advocate General of the Navy shall in his absence on leave or otherwise, be performed by such one of the judge advocates in his department as may be designated in this behalf by the Chief of the Naval Staff.

## **CHAPTER XIX**

### **DISPOSAL OF THE PRIVATE PROPERTY OF PERSONS DECEASED, MISSING, ETC.**

#### **171. Disposal of property of deceased seamen.**

(1) On the death of a Seaman while subject to naval law, the commanding officer of the ship to which the seaman belonged shall as soon as may be,—

- (a) secure all movable property belonging to the deceased that is in the ship or quarters and cause an inventory thereof to be made;
- (b) draw the pay and allowances due to such persons;
- (c) if he thinks fit, and subject to any regulations made in this behalf, collect all moneys left by the deceased in any banking company, including any post office savings banks, co-operative bank or society, or any other institution receiving deposits in money however named, and for that purpose may require the agent, manager or other proper authority of such banking company, society or other institution to pay the moneys to the commanding officer forthwith, notwithstanding anything in the rules of the banking company, society or institution; and such agent, manager or other authority shall, notwithstanding anything contained in any other law, be bound to comply with the requisition.

(2) Where any money has been paid by the banking company, society or other institution in compliance with the requisition under clause (c) of sub-section (1), no person shall have any claim against the said banking company, society or other institution in respect of such money.

(3) The commanding officer shall, if in his opinion it is necessary for the purpose of securing the payment of the ship and service debts and other debts in the ship or quarters of the deceased and the expenses, if any, incurred by the commanding officer in respect of the estate of the deceased, cause the movable property of the deceased to be sold or converted into money.

(4) If the representative of the deceased is on the spot and either pays or gives security for the payment of the ship and service debts and other debts in ship or quarters due from the deceased, the commanding officer shall not take action under clause (c) of sub-section (1) or under sub-section (3).

(5) The commanding officer shall, out of the moneys so received, collected or realised under sub-sections (1) and (3), pay the ship and service debts and other debts in ship or quarters of the deceased, and the expenses incurred in connection with the realisation of the assets of the deceased.

(6) Any property left over after meeting the expenditure indicated in sub-section (5), or where the representative had paid or given security for the payment of the ship and service debts and other debts in ship or quarters the entire property of the deceased, shall be delivered over by the commanding officer to the representative of the deceased, whereupon his responsibility for the administration of the estate of the deceased shall cease.

(7) If no claim is made in respect of the said surplus by a representative of the deceased within twelve months of the death, the commanding officer shall take steps to hand over the property to the prescribed person who shall continue the administration of the estate of the deceased as provided for in section 176.

## **172. Disposal of property of deceased officers.**

The provisions of section 171 shall also apply to the disposal of the property of an officer who dies while subject to naval law, but with the following modifications, namely,—

- (i) the functions of the commanding officer under section 171 shall be performed by a Committee of Adjustment constituted in this behalf in the prescribed manner; and
- (ii) the surplus, if any, after the payment of debts and expenses specified in sub-section (3) of section 171 shall be paid to the person prescribed in this behalf.

## **173. Decision of questions as to ship and service debts and other debts in ship or quarters.**

If in any case a doubt or difference arises as to what are the ship or service debts and the debts in ship or quarters of a deceased officer or seaman or as to the amount payable in respect thereof, the decision of the prescribed person shall be final and shall be binding on all persons for all purposes.

## **174. Nature of the powers of commanding officer or Committee of Adjustments.**

For the purpose of the exercise of his or its duties under section 171 or 172, as the case may be, the commanding officer or the Committee of Adjustment, as the case may be, shall, to the exclusion of all other persons and authorities have the same rights and powers as if the commanding officer or the Committee had taken out representation to the estate of the deceased, and any receipt given by such commanding officer or the Committee, as the case may be, shall have effect accordingly.

*Explanation.* — “Representation” includes probate, letters of administration with or without the will annexed and a succession certificate issued by a Court of competent jurisdiction constituting a person executor or administrator of the estate of the deceased person or authorising him to receive or realise the assets of a deceased person.

### **175. Powers of Central Government to hand over estate of deceased persons to the Administrator-General.**

(1) Notwithstanding anything contained in the Administrator-General's Act 1913, an Administrator-General shall not interpose in any manner in relation to any property of a deceased which has been dealt with under section 171 or section 172 except in so far as he is expressly required or competent to do so by or under the provisions of this Act.

(2) The Central Government may, at any time and in such circumstances as it thinks fit, direct that the estate of a deceased seaman or officer shall be handed over by the commanding officer or the Committee of Adjustment, as the case may be, to the Administrator-General of a State for administration and thereupon such commanding officer or the Committee shall make over the estate to such Administrator-General.

(3) Where under this section any estate is handed over to the Administrator-General, the latter shall administer such estate in accordance with the provisions of the Administrator-General's Act, 1913 :

Provided that where the estate is handed over to the Administrator-General before the ship and service debts and other debts in ship or quarters of the deceased are paid, it shall be the duty of the Administrator-General to pay these debts in priority to any other debts due by the deceased.

(4) The Administrator-General shall pay the surplus, if any, remaining in his hands after discharging all debts and charges, to the heirs of the deceased and if no heir is traceable, shall make over the surplus to the person prescribed in this behalf.

(5) The Administrator-General shall not charge in respect of his duties under this section any fee exceeding three per cent. of the total amount coming to or remaining in his hands after payment of the ship and service debts and the other debts in ship or quarters.

### **176. Disposal of surplus by prescribed persons.**

On receipt of the surplus referred to in sub-section (7) of section 171 or clause (ii) of section 172 or sub-section (4) of section 175, the prescribed person shall,—

- (a) if he knows of a legal representative of the deceased, pay the surplus to that representative ;
- (b) if the surplus does not exceed five thousand rupees in value, the prescribed person may, if he thinks fit, pay or deliver to any person appearing to him to be entitled to receive the same, without requiring such person to produce any probate, letters of administration, succession certificate or other conclusive evidence of title ;
- (c) if the prescribed person does not know of any such representative to whom the surplus could be paid under clause (a), or if the surplus has not been disposed of under clause (b), publish every year a notice in the prescribed form and manner for six consecutive years ; and if no claim to the surplus is made by the legal representative of the deceased within six months even after the publication of the last of such notices, the prescribed person shall deposit the surplus together with any income or

accumulation of income accrued therefrom, to the credit of the Central Government :

Provided that such deposit shall not prejudice the claims of any person to such surplus or any part thereof, if he is otherwise entitled to it.

### **177. Disposal of effects not converted into money.**

Where any part of the estate of a deceased officer or seaman consists of effects, securities or other property not converted into money, the provisions of sub-section (7) of section 171 or clause (ii) of section 172 and section 176 with respect to the payment of the surplus shall, save as may be prescribed, extend to the delivery, transmission or transfer of such effects, securities or property, and the prescribed person shall have the same power of converting the same into money as a legal representative of the deceased.

### **178. Termination of liability of commanding officer, Committee, prescribed person and the Central Government.**

Any payment or application of money or delivery, sale or other disposition of any property made, or purported to be made by the commanding officer, the Committee or the prescribed person in good faith in pursuance of sections 171 to 176 shall be valid and shall fully absolve the commanding officer, the Committee or the prescribed person, as the case may be, as well as the Central Government from all liability in respect of the money or property so paid, applied or disposed of ; but nothing herein contained shall be deemed to affect the right of any executor or administrator or other legal representative or of any creditor of the deceased against any person to whom any such payment or delivery as aforesaid has been made.

### **179. Saving of rights of representative.**

Nothing in this Chapter shall affect the rights and duties of the representative of a deceased seaman or officer or any Administrator-General, in respect of the property of such deceased seaman or officer not collected by the commanding officer or the Committee, as the case may be, and not forming part of the surplus handed over to the prescribed person either under sub-section (7) of section 171 or clause (ii) of section 172.

### **180. Application of Ss. 171 to 179 to persons of unsound mind.**

The provisions of sections 171 to 179 shall, so far as they can be made applicable, also apply in the case of an officer or seaman subject to naval law who is ascertained in the prescribed manner to be of unsound mind notwithstanding anything contained in the Indian Lunacy Act, 1912, or who, while on active service, is officially reported missing, as if the said officer or seaman had died on the day on which his unsoundness of mind is so ascertained or, as the case may be, on the day on which he is officially reported missing :

Provided that in the case of an officer or seaman so reported missing, no action shall be taken to dispose of the property under sections 171, 172 and 175 until such time as a certificate under the regulations made under this Act is issued by or under the authority of the Chief of the Naval Staff or other prescribed person that he is confirmed or presumed to be dead.

### **181. Appointment of Standing Committee of Adjustment in certain cases.**

When an officer while subject to naval law dies or is ascertained in the prescribed manner to be of unsound mind or while on active service is officially reported missing, the reference in the foregoing provisions of this Chapter to the Committee shall be construed as references to the Standing Committee of Adjustment, if any, constituted in this behalf in the prescribed manner and such Standing Committee, if constituted, shall alone be entitled to perform all the functions of such Committee unless otherwise directed by the Chief of the Naval Staff.

**182. Exercise of powers by other persons.**

The functions and powers of the commanding officer in this chapter may in any case be performed or exercised by any other person appointed in this behalf by the chief of the Naval staff.

**183. Forfeiture of effects for absence without leave.**

If any person subject to naval law is absent without leave for a period of one month (whether he is guilty of desertion or of improperly leaving his ship or place of duty or not) but is not apprehended or tried for his offence, he shall be liable for forfeiture of pay and allowances and other benefits as the Central Government from time to time by regulations provide, and the Central Government, the Chief of the Naval Staff or the prescribed officer may by an order containing a statement of the absence without leave direct that the clothes and effects, if any, left by him on board ship or at his place of duty be forfeited, and the same be sold and the proceeds of the same shall be disposed of as provided in the regulations made under this Act ; and every order under this provision for forfeiture or sale shall be conclusive for the purpose of this section as to the fact of the absence without leave as therein stated of the person therein named ; but in any case the Central Government may, if it deems fit on sufficient cause being shown at any time after forfeiture and before sale, remit the forfeiture, or after sale pay or dispose of the proceeds of the sale or any part thereof to or for the use of the person to whom the clothes or effects belonged, or his representatives.

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## CHAPTER XX

### REGULATIONS

**184. Power to make regulations.**

(1) The Central Government may, by notification in the Official Gazette, make regulations for the governance, command, discipline, recruitment, conditions of service and regulation of the naval forces and generally for the purpose of carrying into effect the provisions of this Act.<sup>a</sup>

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

- (a) the rank, precedence, powers of command and authority of officers and seamen in the naval service ;
- (b) the relative rank, precedence, powers of command and authority of officers and seamen in the naval service in relation to members of the regular Army and the Air Force ;
- (c) the retirement and discharge of persons in the naval service ;
- (d) the convening and constitution of courts-martial and the appointment of prosecutors at trials by court-martial ;
- (e) the adjournment, dissolution and sittings of courts-martial ;
- (f) the procedure to be observed in trials by courts-martial, the persons by whom an accused may be defended in such trials and the appearance of such persons thereat ;
- (g) the forms of orders to be made under the provisions of this Act relating to courts-martial and the awards and infliction of death, imprisonment and detention ;
- (h) the carrying into effect of sentences of courts-martial ;
- (i) any matter necessary for the purpose of carrying this Act into execution as far as it relates to the investigation, arrest, custody, trial and punishment of offences triable or punishable under this Act ;
- (j) the terms and conditions of service, the pay, pensions, allowances and other benefits of persons in the naval service, including special provision in this behalf during active service ;



- (k) the ceremonials to be observed and marks of respect to be paid in the naval service ;
- (l) the convening of, the constitution, procedure and practice of boards of inquiry, the summoning of witnesses before them and the administration of oaths by such boards ;
- (m) the computation of time of absence without leave or custody of deserters and absentees without leave ;
- (n) any matter relating to the realisation and disposal of the estates of officers or seamen who are deceased, ascertained to be of unsound mind or reported missing on active service ;
- (o) the enquiry into the conduct of prisoners of war, and their pay and allowances ;
- (p) the provision to be made for the wives and children of prisoners of war or missing persons ;
- (q) the procedure relating to the exercise of powers under section 163 ;
- (r) any other matter which is to be, may be, or is required to be, prescribed under this Act.

(a) For (i) 'Navy (Judicial Review) Regulations, 1958' see S. R. O. 108, D/- 15-2-1958, Gaz. of Ind., 1958, Pt. II-Sec. 4, p. 72.

(ii) 'Navy (Authorised Deductions) Regulations, 1959' see S. R. O. 227, D/- 8-8-1959, Gaz. of Ind., 1959, Pt. II-Sec. 4, p. 105.

(iii) 'Regulations for Indian Naval Reserve and Indian Naval Volunteer Reserve, 1960' see S. R. O. 53, D/- 23-1-1960, Gaz. of Ind., 1960, Pt. II-Sec. 4, p. 33.

## **185. Regulations to be placed before Parliament.**

All regulations made under this Act shall, as soon as may be after they are made, be laid for not less than thirty days before each House of Parliament and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

## **CHAPTER XXI**

### **REPEALS AND SAVINGS**

## **186. Repeals.**

The Indian Navy (Discipline) Act, 1934, the Indian Naval Reserve Forces (Discipline) Act, 1939, and the Naval Forces (Miscellaneous Provisions) Act, 1950, are hereby repealed.

## **187. Provisions as to existing naval forces, appointments, etc.**

(1) The Indian Navy in existence at the commencement of this Act shall be deemed to be the regular naval force raised under this Act.

(2) The Indian Naval Reserve, the Indian Naval Volunteer Reserve and the Indian Fleet Reserve in existence at the commencement of this Act shall be deemed to be the Indian Naval Reserve Forces raised under this Act.

(3) Officers in the Indian Navy or the Indian Naval Reserve Forces at the commencement of this Act shall be deemed to have been appointed as such under this Act.

(4) The person holding office as Judge Advocate of the Fleet at the commencement of this Act shall, on such commencement, be deemed to have been appointed as the Judge Advocate-General of the Navy under this Act.

(5) Seamen in the Indian Navy or in the Indian Naval Reserve Forces at the commencement of this Act shall be deemed to have been duly enrolled as such under this Act.

## CHAPTER XXII

### TRANSITORY PROVISIONS

#### 188. Powers of officers of the Royal Navy.

(1) An officer of the Royal Navy attached to or serving with the Indian Navy shall have and exercise all such powers as are vested in or may be exercised by an officer of the Indian Navy of corresponding rank or holding a corresponding appointment and shall be eligible to be granted a commission to convene courts-martial or to be appointed as president of a court-martial or to sit on a court martial as a member as if he were an officer of the Indian Navy subject to naval law.

(2) The expression "superior officer" wherever used in this Act shall be deemed to include an officer of the Royal Navy when serving under conditions specified in sub-section (1).

## [THE] NEGOTIABLE INSTRUMENTS ACT, 1881

### (ACT XXVI of 1881)

[The Act printed here is as on 1-10-1960.]

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Adapted by A. O., 1937; A. C. A. O., 1948; A. L. O., 1950; Fr. Est. A. L. O. 1954.

—Extended by Acts LIX of 1949; XXX of 1950.

—Repealed in part and amended by Act II of 1885.

—Repealed in part by Act XII of 1891.

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[THE] NEGOTIABLE INSTRUMENTS ACT, 1881  
 (ACT XXVI OF 1881)\*

[9th December, 1881.]

*An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.*

## Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1876, p. 1836; for the Reports of the Select Committee, see *ibid.*, 1877, Pt. V, p. 321, 1878, Pt. V, p. 145, 1879, Pt. V, p. 75; 1881, Pt. V, p. 85.

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The Act has been applied to and shall be in force in the French Establishments in India known to be Pondicherry, Karaikal, Mahe and Yanam, by French Establishments (Application of Laws) Order, 1954, from 1-11-1954.

For summary procedure on negotiable instruments, see the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, O. XXXVII.

## CHAPTER I PRELIMINARY

### 1. Short title.

This Act may be called THE NEGOTIABLE INSTRUMENTS ACT, 1881.

**Local extent. Saving of usages relating to hundis, etc. Commencement.**

It extends to the whole of India [\* \* \*] but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

[a] The words "except the State of Jammu and Kashmir" were omitted by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), S. 2 and Sch. [1-11-1956].

[b] Repealed by the Indian Paper Currency Act, 1923 (X of 1923); see now the Reserve Bank of India Act, 1934 (II of 1934), S. 51.

### SECTION 1 — SYNOPSIS

#### 1. Scope and construction of the Act.

#### 2. Instruments in Oriental language.

##### 1. Scope and construction of the Act.—

[1] Negotiable Instruments Act is based on principles of English law and where no special considerations arise with reference to Indian circumstances Courts are justified in construing statute conformably to provisions of English Law which follows the general commercial law of the rest of the world. 1919 Mad 179 (182) [AIR V 6] (DB).

[2] There are certain differences between the English Act and the Indian Act, which preceded the former by a year. But substantially the two Acts correspond. Both have been based on the law developed by the English Courts as a part of the law-merchant, which the common law originally received on the basis of what was proved to Court to be the custom of European business-men in their dealings, but which eventually, under the name of the law-merchant was integrated with and became a part of the common law. Both were based on the English decisions and hence these and later decisions of either country are commonly cited and relied upon. 1944 P C 58 (60) [AIR V 31]: 71 Ind App 124: ILR (1944) Kar (PC) 246.

[3] Where the Act was not in force and as such could not in terms apply the principles underlying the provisions of the Act must be held to be applicable as rules of justice, equity and good conscience. 1956 Raj 129 (132) [AIR V 43 C 40]: ILR (1956) 6 Raj 612 (DB). (Bikaner.) \*1950 Raj 55 (55) [AIR V 37 C 21]. (Marwar.)

[4] In order to construe Negotiable Instruments Act, it would not be proper to find out

what Law Merchant was before Act was enacted. 1928 Cal 148 (151) [AIR V 15]: 55 Cal 551 (DB).

[5] According to Law Merchant drawing or bill of exchange is necessary incident of carrying out of trade. Law Merchant which Indian legislature has thought fit to adopt is enacted in Negotiable Instruments Act. In the interests of commerce negotiable instrument given by one member of trading firm binds all other members whether adult or minors. (10) 34 Bom 72(83) (DB).

[6] The Law Merchant is not a closed book nor is it fixed or stereotyped. Practices of businessmen change and courts of law in giving effect to the dealings of the parties will assume that they have dealt with one another on the footing of any relevant custom or usage prevailing at the time in the particular trade or class of transaction. 1944 P C 58 (60) [AIR V 31]: 71 Ind App 124: ILR (1944) Kar (PC) 246.

[7] Act legalises system under which claims upon certain mercantile instruments can be treated like ordinary goods passing from one hand to another. 1914 Cal 566 (568) [AIR V 1] (DB).

[8] Negotiability can be attached to documents by mercantile usage. A document is negotiable if by customs of the money market it is transferable as if it were cash and its bona fide transferee obtains a good title even though his transferor had none. 1918 Low Bur 122 (128) [AIR V 5]: 9 Low Bur Rul 143 (DB).

[9] The broadly stated proposition that the Negotiable Instruments Act leaves untouched the rules of the general law which regulate the assignment of choses in action and transfer of chattels requires the qualification that the latter must not be inconsistent with the

**Section 1 — Note 1 (contd.)**

former. A general and earlier rule must give way to a special and later provision. 1914 Cal 566 (567) [AIR V 1] (DB).

[10] Contract Act is general statute dealing with contracts. Negotiable Instruments Act is statute dealing with particular form of contract, and law laid down for special cases must always overrule provisions of general character. 1933 Rang 131 (132) [AIR V 20].

[11] According to the invariable course of dealing in the Calcutta Jute Trade delivery orders are only issued on cash payment, passed from hand to hand by endorsement and are sold and dealt with in the market as absolutely the goods to which they relate. (11) 38 Cal 127 (138, 139) (DB).

[12] A delivery order is a document of title to the goods to which it relates and may or may not be negotiable according to the conditions attached to it or according to the usage or trade under which it is issued. 1918 Low Bur 122 (126) [AIR V 5] : 9 Low Bur Rul 145 (DB).

[13] The Negotiable Instruments Act was *prima facie* intended to lay down the whole law regarding cheques, bills of exchange and promissory notes. 1919 Bom 73 (74) [AIR V 6].

[14] Upon their plain language and also upon authority, certain definitions in Act, such as that of "negotiable instrument," "holder," and "holder in due course," are exhaustive. But Act is not necessarily compendium of whole law relating to transfer of interest in negotiable instruments or procedure governing actions on them. Act does not expressly exclude doctrine of representative action. 1940 Bom 164 (166) [AIR V 27] : ILR (1940) Bom 153 (DB).

[15] Mercantile usage, however extensive, should not be recognised by Court, if contrary to provisions of statute. 1919 Bom 73 (75) [AIR V 6].

[16] Beyond special rules of evidence and presumptions enacted in Negotiable Instruments Act, other principles of substantive law or rules of evidence apply to claims relating to negotiable instruments. 1935 Mad 181 (182) [AIR V 22] : 58 Mad 693 (FB).

[17] In cases of negotiable instrument, any equities which have to be pleaded should generally arise out of the very transactions itself and must not arise out of the transactions which are either collateral or independent in character. 1938 Ma 1 597 (597) [AIR V 25].

[18] There must be no reasonable possibility of ambiguity in the construction of a negotiable security which is meant to pass from hand to hand; its meaning should be instantly recognisable and not after an elaborate analysis in three Courts. 1936 Nag 252 (253) [AIR V 23].

**2. Instruments in Oriental language. —**

[1] Negotiable Instruments Act does not affect local usage relating to instrument in Oriental language. (11) 1911 Pun L R No. 42, p. 525 (528) : 1911 Pun Re No. 39 (DB).

[2] Bill of Exchange may include hundi, but it does not follow that hundi includes Bill of Exchange. 1919 Cal 235 (240) [AIR V 6] (DB).

[3] Negotiable instruments, in Oriental language, are sometimes promissory notes in form and substance; but generally they are of type of bills of exchange and are called hundis. Act expressly saves from its operation any local usage relating to such instruments. 1936 All 393 (399) [AIR V 23] : 58 All 858 (DB).

[4] Where hundis are in Oriental language, the rights of the parties concerned with respect to these hundis fall properly to be determined only on the basis of and in consonance with the principles underlying the Negotiable Instruments Act or in accordance with the general custom in vogue in dealing with such instruments among merchants in that part of the country. 1956 Raj 129 (134) [AIR V 43 C 40] : ILR (1956) 6 Raj 612 (DB).

[5] Hundis are negotiable instruments written in some Oriental language, being sometimes bills of exchange and at others promissory notes and are subject to local usage and these usages are unaffected by the provisions of the Act. In a suit based on a hundi, the first essential is whether the hundi is a promissory note or a bill of exchange; if it is a promissory note the provisions of that Act relating to bills of exchange ought not to be applied; if it is neither one nor the other the Act cannot be applied, the case being governed by the general law of contract. 1919 Nag 39 (39, 40) [AIR V 6].

[6] The Negotiable Instruments Act does not apply to hundis and it is therefore permissible to plaintiff to set up and prove a usage for the payment of interest at a rate exceeding 6 per cent per annum notwithstanding the provisions of S. 80. 1932 Lah 582 (583) [AIR V 19] : 13 Lah 800 (DB).

[7] Hundi silent as to payment of interest—In accordance with prevailing custom interest payable if hundi is not met within certain time—Drawer of hundi is liable for interest. 1920 Low Bur 108 (110) [AIR V 7] : 10 Low Bur Rul 321.

[8] It is well recognised rule in Rawalpindi that if interest was charged on hundi and such hundi was not paid at maturity, same rate of interest continued to be payable. 1915 Lah 248 (249) [AIR V 2] : 1915 Pun Re No. 24 (DB).

[9] The mercantile community at Delhi recognise the custom of accepting hundis by word of mouth and a mercantile usage exists whereby the drawee, who signifies his assent by word of mouth, is made liable on the hundi accepted by him. 1920 Lah 264 (265) [AIR V 7] : 1 Lah 80 (DB).

[10] In the absence of a mercantile usage or custom to the contrary, the acceptance of a hundi or bill of exchange must be in writing and written upon the hundi or bill of exchange itself. The acceptance written upon a copy of the bill is not sufficient nor can there be any oral acceptance. 1927 Nag 389 (390) [AIR V 20].

[11] In considering question of negotiability of instrument it is always important to remember two very essential conditions both under Act and mercantile usage. One is that instrument is transferable like cash by delivery and other is that holder *pro tempore* has title to

**Section 1 — Note 2 (contd.)**

claim or receive payment in his own name. Act deals with only three kinds of instruments; bills of exchange, promissory notes and cheques. It makes no provision as regards hundis, yet it has never been held anywhere that hundi is not negotiable instrument. Shahjog hundi which is a document in vernacular is a negotiable instrument although it does not come within the definition of a bill of exchange. 1936 All 396 (399, 401) [AIR V 23] : 58 All 858 (DB).

[12] Shahjog hundis though unquestionably negotiable instruments are not negotiable instruments within the narrow meaning of the Negotiable Instruments Act. They are not ordinary hundis to which the Act applies. Many of the incidents which apply to these hundis are no doubt the same as those which apply to instruments governed by the Act but that is because of mercantile usage and custom and not because of the Act. 1943 Nag 99 (100) [AIR V 30] : I L R (1943) Nag 149 (FB). (Provision for interest made in S. 80 of the Act also cannot apply and cannot be invoked.) +1960 Punj 157 (159) [A I R V 47 C 53]. (A hundi of this type must necessarily be presented to the drawee and a notice of dishonour of the same must be given to the drawer, endorser and all other concerned parties. Technical rules with regard to the time within which a notice of dishonour has to be given or the manner in which the same has to be given as provided for in the Negotiable Instruments Act would not necessarily apply to such notices, but the notice must all the same be within reasonable time and the provisions of law contained in the Negotiable Instruments Act must 'substantially' as contradicting-ished from 'technically' be complied with.)

[13] Right in Shahjog hundi passes by delivery without endorsement. This right may be restricted by special endorsement and then title of holder will be according to terms of endorsement. Once shahjog hundi reaches Shah its negotiability as bearer hundi comes to an end. If after acceptance Shah endorses it to person of straw drawee possesses right to refuse to honour hundi. 1926 Bom 471 (476) [AIR V 13] : 50 Bom 765.

[14] According to custom among shroffs relating to shahjog hundi the Shah who obtains payment of a shahjog hundi is, in the event of the hundi turning out to be false, fraudulent, stolen, or forged one, bound to refund the amount of the hundi with interest unless he produces the actual drawer or the person who committed the fraud. 1914 Bom 239 (240) [AIR V 1].

[15] In the absence of any evidence as to custom, the cause of action against a Shah, who received payment on a forged shahjog hundi to re-imburse the drawee is for money had and received to the use of the plaintiff based either upon money having been paid under a mistake of fact or without consideration and does not arise upon any implied covenant for indemnity. 1934 Bom 402 (404) [AIR V 21] : 59 Bom 252 (DB).

[16] There is no custom relating to a Shahjog hundi which absolves the drawee paying

the amount of the hundi to a person having no title although a Shah, from liability in conversion to the true owner. 1934 Bom 400 (401) [AIR V 21] : 59 Bom 97 (FB) + 1947 Sind 140 (141) [A I R V 34 C 49] : I L R (1946) Kar 355 (DB).

[17] Practice among shroffs dealing with hundi — Shah guaranteeing genuineness of hundi and not solvency of drawer — Drawee will not pay on presentation of shahjog hundi unless he is satisfied as to respectability of Shah. 1914 Bom 239 (240) [AIR V 1].

[18] A Shahjog hundi is not a bill of exchange or a promissory note. It is only payable to the respectable holder and is not equivalent to a hundi payable to a bearer. 1916 Cal 888 (890) [AIR V 3] (DB).

[19] Shahjog hundi is only payable to respectable holder unlike hundi payable to bearer or order. Where drawer and drawee are same person, holder of bill of exchange can treat it as bill of exchange or as promissory note. An attested Shahjog hundi can be sued on either as promissory note or as bond. 1916 Cal 838 (839) [AIR V 3].

[20] A shahjog hundi is not equivalent to a hundi payable to bearer and it ought not to be paid by the drawee unless it has endorsed on it, when presented, the name of the Shah by whom it is presented, or rather by whom it is sent for presentation. There is no rule of law which would have the effect of making the word 'shahjog' mean payable to bearer quite independently of the endorsements. 1932 Lah 312 (313) [AIR V 19] (DB).

[21] Where a person pays to another the amount of a hundi, not as to a Shah, but as to an endorsee for collection of a hundi on the security of a railway receipt, he has no equity to recover back the amount from such other if the security turns out to be a forgery. In such a case the latter is liable to refund the money or to trace the hundi to its source provided notice is given within reasonable time of the discovery of the forgery, i.e., provided the payer loses no time in making the communication and claiming the refund. 1914 Bom 260 (262) [AIR V 1] : 39 Bom 513 (DB).

[22] Bearer of Shahjog hundi although minor, is entitled to sue on hundi. 1925 Bom 527 (528) [AIR V 12] (DB).

[23] Name of drawer of hundi need not be separately entered on document at any specific place but it is sufficient if it shows person addressed, that it has been made by third person who purports to be bound thereby. (21) 3 U P L R 46 (47) (DB) (Pat).

[24] The provisions of Negotiable Instruments Act are strictly applicable to natives. If any local usage relating to bills and notes in an Oriental language is relied on under S. 1, it should be alleged and established by the party who relies upon it. (03) 26 Mad 526 (531) (DB).

[25] The Negotiable Instruments Act, S. 1, saves the operation of any local usage relating to instruments written in an Oriental language. But any such usage must be alleged and established by the party relying upon it. In the absence of any such allegation or proof the Act would operate to the same extent as in



**2. Repeal of enactments.** [*Repealed by the Amending Act, 1891 (XII of 1891), S. 2 and Sch. I.*]

**3. Interpretation-clause.**

In this Act—

\*[ \* \* \* \* \*

"Banker."

<sup>b</sup>["banker" includes any person acting as a banker and any post office savings bank ;]

\*[ \* \* \* \* \*

[a] Definition of "India" was omitted by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), S. 2 and Sch. [1-11-1956]. [b] Substituted for the former definition of "banker" by the Negotiable Instruments (Amendment) Act, 1955 (XXXVII of 1955), S. 2 [1-4-1956]. [c] Definition of "Notary public" was omitted by the Notaries Act, 1952 (LIII of 1952), S. 16 [w. e. f. 14-2-1956].

## CHAPTER II

### OF NOTES, BILLS AND CHEQUES

**4. "Promissory note".**

A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.<sup>a</sup>

#### Illustrations

A signs instruments in the following terms :

(a) "I promise to pay B or order Rs. 500."

(b) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(c) "Mr. B, I O U Rs. 1,000."

(d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

#### Section 1 — Note 2 (contd.)

the case of instruments not written in an Oriental language. ('10) 6 Nag L R 33 (36).

[26] Exception in S. 1, Negotiable Instruments Act, in favour of instruments in Oriental language save them against provisions of that Act overriding local usages but does not prevent application being in contravention of S. 26, Paper Currency Act, of other Acts such as Paper Currency Act to such instruments. Hundi drawn payable to bearer on demand is illegal even though drawn in Oriental language. 1920 Mad 944 (945) [AIR V 7] (DB).

[27] Case under Hyderabad Negotiable Instruments Act, S. 1—Exception—Instruments in Oriental language are not excluded from operation of Act—What is excluded is local usage relating to such instruments—Such usage is saved from operation of Act, even though it is at variance with Act—But it has to be alleged and proved. ('55) ILR (1955) Hyd 20 (23).

#### SECTION 4 — SYNOPSIS

1. Scope.

2. Essentials.

3. Promissory note and Bill of Exchange.

4. "Unconditional undertaking."

5. "Signed by the maker."

6. "Certain sum of money only."

7. "To or to the order of certain person."

8. "To bearer."

9. Post-dating of promissory note.

10. Instruments which are promissory notes.

11. Acknowledgment, receipts and agreement.

12. Original cause of action, suit on.

13. Evidence and proof.

1. Scope. — [1] Where promissory note promises to pay sum mentioned unconditionally to certain person, there is nothing in S. 4, which in any way, curtails general authority conferred by S. 20 on person to whom stamped and signed paper is delivered to convert it into negotiable instrument payable to specified person. 1940 Pat 377 (378) [AIR V 27] : 19 Pat 404 (DB).

[See also 1954 Mad 532 (534, 535) [AIR V 41 C 198].]

[2] Execution of promissory note for interest due on another debt does not amount to payment of interest on debt and fresh advance of sum as principal under note. Debtor in executing pro-note merely gives creditor document or voucher of debt possessing certain legal attributes. 1941 Mad 193 (194) [AIR V 28] (DB).

[3] The definition of 'promissory note' in S. 2 (22), Stamp Act is more comprehensive and in addition to the promissory note as defined in the Negotiable Instruments Act. It

(e) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(f) "I promise to pay B Rs. 500 seven days after my marriage with C."

(g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(h) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

[a] As to prohibition against making a promissory note for the payment of money payable to bearer on demand, *see* sub-section (1) of S. 31 of the Reserve Bank of India Act, 1934 (II of 1934). Sub-section (2) of that section is as follows :—

"Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument." The said sub-section (2) was added by the Reserve Bank of India (Amendment) Act, 1946 (XXIII of 1946), S. 2.

#### Section 4 — Note 1 (*contd.*)

includes a note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen. 1947 Nag 145 (149, 150) [AIR V 34 C 43] : I L R (1946) Nag 796 (DB).

[4] Before a document can be treated as a promissory note it should be a promissory note both in form and in intent. 1955 Sau 74 (76) [(S) AIR V 42 C 27] (DB).

[5] In the Nattukottai community, documents which are ordinary promissory notes are framed in the manner of letters but stamped as such and nobody mistakes such transactions as anything other than dealings on promissory notes. 1956 Mad 629 (630) [AIR V 43 C 201] (DB).

**2. Essentials.**—[1] The mere description of an instrument as a promissory note will not make it a promissory note if it fails to satisfy the statutory requirements of Ss. 4 and 13. 1953 Cal 758 (761) [A I R V 40 C 284] : I L R (1955) 1 Cal 441.

[2] In order that a document should be a promissory note it is necessary that there should be—(i) an unconditional undertaking to pay, (ii) the sum should be a sum of money and should be certain, (iii) the payment should be to or to the order of a person who is certain, or to the bearer, of the instrument, (iv) and the maker should sign it. If these four conditions are present a document becomes a promissory note. 1955 Raj 85 (86) [(S) AIR V 42 C 28] : I L R (1955) 5 Raj 367 (DB) \* 1959 Raj 156 (157) [A I R V 46 C 62] : I L R (1959) 9 Raj 362 (DB) + 1957 Raj 360 (362) [A I R V 44 C 138] : ILR (1957) 7 Raj 290.

[3] In order to find out whether the document in question is a promissory note or not, the intention of the parties at the time of the execution of the document is to be looked into. The promise to pay must be the substance of the instrument and there must be nothing inconsistent with the character of the instrument as substantially a promise to pay. 1959 Raj 156 (159, 162) [A I R V 46 C 62] : ILR (1959) 9 Raj 362 (DB).

[4] There must be an express undertaking to pay the amount mentioned in the instrument before it can be held to be a promissory

note. A mere implied undertaking, by the use of the word "debt" or "pronote" in the instrument is not sufficient. 1949 All 431 (432) [AIR V 36 C 162] : ILR (1949) All 713 (DB).

[5] The fact that a promissory note is written on a page in an account book of the creditor does not make it illegal or any the less a promissory note. There is nothing in the Negotiable Instruments Act to make even a promissory note not negotiable by express terms or by necessary implication. 1953 Cal 758 (761) [AIR V 40 C 284] : ILR (1955) 1 Cal 441.

[See also 1954 Sau 52 (53) [AIR V 41 C 27]. (The test as to negotiability and intention of the parties is principally for determining whether the essential purpose of an instrument was to record only a promise to pay and nothing more.)]

[6] The essentials of a promissory note are that it must contain an unconditional undertaking to pay a certain sum of money and the document must be intended by the parties to be a promissory note. 1955 Sau 74 (76) [(S) AIR V 42 C 27] (DB).

[7] It depends upon the circumstance and wording in each case as to whether a document is a promissory note or an agreement. One of the tests to be applied to find it out is the intention of the parties. The second is whether the document as drawn out can be said to be negotiable, that is to say, could a third person file a suit on the strength of the document? If he could not, then it is a mere agreement. 1951 Ajmer 71 (72) [A I R V 38 C 66].

[8] A mere implied undertaking by the use of the word "debt" or "pronote" in a document is not sufficient to constitute it a promissory note. There must be an express undertaking to pay. 1949 All 431 (432) [AIR V 36 C 162] : I L R (1949) All 713 (DB) + 1957 Orissa 153 (154) [A I R V 44 C 42] : I L R (1957) Cut 101. (A memo stating a particular sum of money deposited to be returned on demand, is not promissory note.)

[9] Where a writing stated, 'Date of maturity Maha Bidi 6, Samvat 2004 — I have received Rs. 6,000 (in words rupees six thousand) taken by me for one month on Pous Bidi 6, Samvat 2004. Miti Pous Bidi 7 Samvat 2004'.—*Held*, that the document, which did not contain an express promise to pay, was a receipt and not a promissory note.

**Section 4 — Note 2 (contd.)**

Mere mention of the date of maturity in it could not make it a promissory note. 1955 Madh B 81 (81) [(S) AIR V 42 C 26] (DB).

[10] Where the language of a document showed that it was written for evidencing the debt obtained by the debtor and an express promise to pay up the debt within a specified time was given therein, and the instrument was attested by a witness and it was not payable to order or bearer — *Held* that the document was a bond and not a promissory note. 1957 Raj 387 (387) [AIR V 44 C 148].

[11] The mere description of an instrument as a promissory note will not make it a promissory note if it fails to satisfy the statutory requirements of Ss. 4 and 13. 1953 Cal 758 (761) [AIR V 40 C 284]; ILR (1955) 1 Cal 441.

[12] Main question to be considered is not whether the instrument is negotiable or not though ordinarily negotiability of an instrument is a good test but to consider whether in substance and in primary intention of the parties the document was or was not a promissory note and whether it was intended to record a different kind of transaction altogether. A reference in the promissory note to a pre-existing account made with a view to state the consideration for the note, does neither make the liability under the note a contingent one, nor the instrument any the less a promissory note. 1941 All 158 (160, 162) [AIR V 28]; ILR (1941) All 264 (DB).

[13] One of most essential characteristics of promissory note is certainty—certainty both as regards person by whom and to whom payment is to be made. 1931 Cal 357 (388) [AIR V 18]; 58 Cal 752 (DB) + 1929 Nag 274 (275) [AIR V 16]; 25 Nag L R 173. (It is not because document is not payable to order or bearer that it is excluded from definition of promissory note.)

[14] Document executed by one person to another containing unconditional promise to pay certain sum of money to latter, who is sufficiently indicated is promissory note though it is not shown that maker of document intended to make promissory note. (10) 1910 Mad W N 836 (837) + 1935 Mad 23 (23) [AIR V 22]; 58 Mad 261 (DB). (Form is immaterial.)

[15] Promissory note does not lose its character as such merely because it contains promise to pay at certain place. 1944 Bom 235 (235) [AIR V 31].

[16] A promissory note amounts in law to payment and what vitiates a promise does not vitiate a payment. 1954 Trav-Co 231 (252) [AIR V 41 C 82] (DB).

[17] The mere fact that the document bore four one-anna stamps and the impression of the scribe, would not make it a promissory note when it clearly stated that the amount was kept in deposit. 1957 Orissa 153 (155) [AIR V 44 C 42]; ILR (1957) Cut 101.

**3. Promissory note and Bill of Exchange.** — [1] In promissory note executant promises himself to pay, while in bill of exchange he directs another to pay. In bill of exchange person liable is responsible executant and not scribe. When hundi is either promissory

note or bill of exchange, it is governed by Contract Act and not by Negotiable Instruments Act. 1919 Nag 39 (39, 40) [AIR V 6].

[2] Distinction between liability of maker of promissory note and bill of exchange—Maker of promissory note is principal debtor—Drawer of bill of exchange is surety. 1936 Nag 260 (262) [AIR V 23]; ILR (1939) Nag 601.

[3] Mere inscription of words "Hundi" and "accepted" on the upper part of the stamp does not make the document a bill of exchange, when the document is a promissory note. The real character of document has to be determined by looking to the provisions of document itself. 1941 Cal 498 (500) [AIR V 28]; ILR (1941) 2 Cal 107 (FB).

**4. "Unconditional undertaking."** — [1] The essential feature of a promissory note is an express unconditional promise to pay; and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money. 1954 Sau 52 (53) [AIR V 41 C 27].

[2] Instrument containing words "I am liable to pay" without any undertaking is not promissory note. 1934 Mad 220 (221) [AIR V 21].

[3] Where document was in shape of request to plaintiff to pay defendants Rs. 500 which defendants would re-pay with interest—*Held* that this was conditional contract and not promissory note. 1924 Pat 96 (97) [AIR V 11] (DB).

[4] Instrument only undertaking to pay interest — No unconditional undertaking to pay money — It is not promissory. 1924 Lah 684 (685) [AIR V 11].

[5] Alleged promissory note ran as follows: — I promise to pay on demand at my convenience ..... — *Held*, that it was not promissory note as promise was not unconditional. 1921 Bom 336 (336) [AIR V 8].

[6] Document which contains promise to pay on contingency will not be treated as promissory note for purposes of Negotiable Instruments Act but it may be regarded as such for the purposes of Stamp Act. 1941 All 158 (162) [AIR V 28]; ILR (1941) All 264 (DB). (Test to decide whether document is promissory note enunciated.)

[7] Promissory note may be by instalments. Where document sets out facts of amount of debt being owing from father of defendants and then states that total of Rs. 400 will be paid in four instalments on dates fixed in four years with interest at 1 per cent per mensem, it is unconditional promise to pay, and therefore, document is promissory note within S. 4. 1935 All 410 (411) [AIR V 22].

[8] In a case where a promissory note is not produced and the receipt of the money is not admitted the plaintiff before he can succeed must prove that he had lent the money to the defendant and the money was, therefore, repayable. The Court cannot either allow proof of the fact that there was an unconditional undertaking to repay or presume to the same effect. 1952 All 877 (878) [AIR V 39].

[9] All documents containing an under-

**Section 4 — Note 4 (contd.)**

taking to pay the amounts mentioned therein unconditionally are not promissory notes. To make it such a document, it must substantially consist of a promise to pay a defined sum and must not be something else. ('58) 1958-1 Andh W R 224 (226).

[10] The relevant portion of Ex. A-1 a document styled as promissory note executed by the defendant ran as follows: 'I agree to pay you or to your order on demand the sum of Rs. 10,000 (rupees ten thousand) only being the amount my brother K and I have agreed to pay you for bringing about the sale to the I. L. T. D. Co. Ltd., Guntur, of our site in Guntur (which is now leased out to the said company) with interest thereon at 12 per cent (twelve per cent.) per annum from this day till realisation.'—*Hea* that so far as the defendant was concerned, the undertaking or obligation to pay in Ex. A-1 could not be regarded as not intended to take effect until the fulfilment of some condition. Ex. A-1 was a promissory note as defined in S. 4 of the Act and the defendant was entitled to the benefit of the presumption under S. 118 of the Act. 1959 Andh Pra 370 (373) [AIR V 46 C 107] (DB).

5. "Signed by the maker." — [1] An agent of a firm can sign a promissory note on behalf of the firm. 1957 Mad 8 (10) [AIR V 44 C 3] (DB).

[2] When a joint family carries on business in the particular name and style, any member signing a negotiable instrument on behalf of the joint family business should do so in a manner which may clearly point out that he is signing on its behalf. Whatever may be the legal consequences of not so signing, the document not so signed cannot be termed as a promissory note. ('59) ILR (1959) 9 Raj 187 (189, 190).

6. "Certain sum of money only."—[1] A deed narrated that partnership accounts were settled and certain amount was found due from defendant to plaintiff and defendant promised to pay that sum to plaintiff *wakte saruart*. Word 'pronote' was also used in document—*Hea* that deed was a pronote. 1925 Oudh 560 (560) [AIR V 12].

[2] A term "quarterly rests" means that when ultimately interest comes to be calculated it is to be calculated on certain basis or system. Where promissory note expressed promise to pay sum named therein with interest at 10 per cent per annum with "quarterly rests"—*Hea* that note was for sum certain within Ss. 4 and 5 of Act and, therefore, negotiable instrument. 1929 Pat 136 (138) [AIR V 16] : 7 Pat 41 (DB).

[3] If the rate of interest is specified in the document the certainty of the sum payable is in no way affected as it may be merely a matter of calculation to arrive at the sum payable. A sum of money is certain even though it can be arrived at by making certain calculations. 1960 Raj 20 (22) [AIR V 47 C 8] : ILR (1959) 9 Raj 641.

[4] Where the intention underlying the document was that after certain credit and debit entries had been made and taken into

consideration, a certain amount would be due which the applicant undertook to pay, the document is not a promissory note. 1951 Ajmer 71 (72) [AIR V 38 C 66].

7. "To or to the order of certain person."—[1] One of the basic tests of a promissory note is that the payee or bearer must be certain. The words "we as well as our successors are bound herewith to fulfil your dues whenever and wherever you or your successors ask or demand the said sum" do not satisfy the test of certainty of the payee and cannot amount to a promissory note. 1953 Cal 758 (761, 762) [AIR V 40 C 284] : I L R (1955) 1 Cal 441.

[2] The absence of the name of the payee in a promissory note will not make the note invalid where the payee was known with certainty even at execution. Where the description of the payee in the suit promissory note was "son of P. C.", and the plaintiff who had lent the money, was the son of P. C. though not mentioned by name and the lender and borrower knew it—*Hea*, that the promissory note was not invalid on ground of absence of name of payee although there were other sons of P. C. in existence. To say that the name must always be mentioned to make a promissory note valid is not sustainable in any modern court of justice, equity and good conscience. 1957 Mad 355 (355) [(S) AIR V 44 C 108].

[3] It is clear from Illustration (b) to the section that where a person, to whom the payment is to be made, can be certainly found out from the language of the document, the document would still be a promissory note, though the name of that person is not mentioned after the words "I shall pay" or similar words appearing in such document. 1955 Raj 85 (86, 87) [(S) AIR V 42 C 28] : I L R (1955) 5 Raj 367 (DB).

[4] Words "a certain person" in Ss. 4 and 5 of Act incorporated in S. 2 (22), Stamp Act, mean person who is capable of being ascertained at time when promissory note is made. ('10) 5 Low Bur Rul 102 (107) (DB).

[5] Promissory note payable to manager of Bank is payable to "certain person." 1920 Pat 157 (158) [AIR V 7] : 5 Pat L Jour 536 (DB).

[6] Promissory note made in favour of person described by his office is one made in favour of certain person and valid. 1930 Mad 1004 (1007, 1008) [AIR V 17] : 53 Mad 968 (DB).

[7] Promissory note in favour of institution which has no judicial status is void. 1934 Nag 207 (208) [AIR V 21] : 31 Nag L R 15.

[8] Suit is maintainable on promissory note by real promisee even though wrong name is mentioned on note if he is able to show that wrong name was entered by mistake. ('12) 22 Mad L Jour 121 (121).

[9] To pay money to third party on behalf of payee but on third party's order cannot be treated as same thing as, or equivalent to payment to payee or to his order which is promise necessary in any note in order to bring it within definition in S. 4. 1933 Mad 306 (308).

**Section 4 — Note 7 (contd.)**

309) [AIR V 20] (DB). (Tests in deciding whether document is promissory note enunciated.)

[10] Act V of 1914 is not retrospective and pronote executed prior to Act, payable in alternative to one of several payees is not promissory note. 1921 Mad 122 (123) [AIR V 8] (DB).

[11] Document in which drawer undertakes to pay sum there specified to plaintiff or order "*maarfai* another person" is an unconditional one and that words "*maarfai* another person" do not take document out of S. 4. 1920 Lah 374 (375) [AIR V 7] : 1919 Pun Re No. 141.

[12] Where the name of the payee is not given in the body of the document but he has been described as 'you' it cannot be held that the person who advanced the money is a person certain. Therefore, it cannot be held that the document is a promissory note within the meaning of S. 4. 1959 Orissa 178 (176) [AIR V 48 C 52] : ILR (1958) Cut 178.

[13] The mere omission of the expression "to the order of" would not render a document any the less a promissory note if otherwise it fulfilled the terms of the definition of a promissory note. Actually a promissory note need not contain this expression. It is sufficient if there is an unconditional undertaking to pay a certain sum of money to a certain person. 1955 Mad 652 (652) [AIR V 42 C 205] : ILR (1955) Mad 1027 (FB).

8. "To bearer." — [1] Before document can be taken to be promissory note payable to bearer, it is necessary that person to whom money is to be paid or that it is to be paid to bearer should be expressly stated. 1938 Nag 484 (464) [AIR V 25].

[2] Shahjog hundi is not bill of exchange nor promissory note. It is only payable to a respectable holder and not equivalent to hundi payable to bearer. 1916 Cal 888 (890) [AIR V 3] (DB).

**9. Post-dating of promissory note. —**

[1] There is no prohibition in the Indian Negotiable Instruments Act against post-dating and a promissory-note which is post-dated is an effective negotiable instrument though it cannot be sued upon till after that date passes. 1952 Nag 308 (310) [AIR V 39] : ILR (1953) Nag 233 (DB).

10. Instruments which are promissory notes. — [1] Promissory note with words "security for over draft" printed on it—Note does not cease to be promissory note. 1943 Mad 216 (217) [AIR V 30] (DB).

[2] A document brought into existence for the purpose of recording an agreement to pay which is not a receipt for money and which has been duly stamped as a promissory note and contains an unconditional promise to pay, and intended and described as a promissory note by the executant, fulfills the conditions of a promissory note within the meaning of S. 4. 1948 Nag 81 (82) [AIR V 33 C 20] (DB).

[3] Debentures in the form of a promise to a particular sum to a certain bank or on a certain date with half-yearly in-

terest in the meantime at certain rate, having on their back a series of spaces for the entry of interest payments and a column of endorsements commencing with an endorsement by original payee, are promissory notes and therefore negotiable instruments under S. 13. 1932 P C 22 (24) [AIR V 19] : 58 Ind App 433 : 58 Bom 1. (AIR 1928 Bom 407 and AIR 1928 Bom 436, *Affirmed*. 24 Bom 65, *Overruled*.)

[4] War bond is a promissory note. 1933 Mad 376 (378) [AIR V 20] (DB).

[5] Note given as security for sums already due contained promise to pay "*Rukka Indul talab*"—*Held*, that note was new contract and evidenced promissory note. (13) 21 Ind Cas 199 (199, 200) (Oudh).

[6] A 'hand-note' is promissory note within meaning of S. 4. 1941 Pat 99 (100) [AIR V 28] : 19 Pat 974 (DB).

[7] The document in question ran thus: 'Received Rs. . . . . from A and promise to pay the same on demand. Date. . . . . Sd/ B. *Held*, that the document in question was a promissory note. 1952 Ajmer 31 (1) (31) [AIR V 39].

[8] An unstamped document ran as follows:—"Received with thanks the sum of Rs. 300 as loan from V and will return back in the period of 24 years without interest. *G. B.* 24-8-48." *Held*, that the document came within the definition of a promissory note. 1957 Raj 360 (362) [AIR V 44 C 138] : ILR (1957) 7 Raj 290.

[9] Illustration 2 to S. 4 (a) shows that an acknowledgment of indebtedness for a certain sum of money coupled with the words "to be paid on demand" is a promissory note. 1955 Sau 74 (76) [(S) AIR V 42 C 27] (DB).

11. Acknowledgment, receipts and agreement.—[1] Nature of document must be determined by its contents and description of it given in plaint cannot change its character or legal effect. Letter offering to pay another's debt after certain period is only mere proposal which on acceptance by promisee would ripen into completed agreement. 1934 Lah 93 (94) [AIR V 21] (DB).

[2] It is a question of fact in each case whether a particular document is to be regarded as an acknowledgment or promise. 1959 Raj 156 (159) [AIR V 46 C 62] : ILR (1959) 9 Raj 362 (DB).

[3] A memorandum of what a person had orally promised to pay on a certain day and that he would pay that amount on certain day is not a promissory note. 1923 Mad 434 (434) [AIR V 10].

[4] Document running as follows:—"Received from you this day cheque . . . for Rs. . . . Amount would be repaid with interest. Principal amount will be paid with interest after ten months from this date."—*Held*, that document was not a promissory note, the document not being intended to be a negotiable instrument. 1938 P C 121 (123) [AIR V 25] : 32 Sind L R 462.

[5] Document reciting that it is receipt executed by two persons for certain amount at certain rate of interest for and on behalf of another person—Amount payable after two

**Section 4 — Note 11 (contd.)**

years. Stamps said to be duly affixed—Document signed by executants—Document held to be receipt and not promissory note even if coupled with promise to pay. 1936 P C 171 (174) [AIR V 23]: 63 Ind App 279: 17 Lah 557. (8 Cal 645, *Overruled*.)

[6] In order that document shall be promissory note within meaning of S. 4 it must be promissory note in form; it must in addition be intended by parties to be promissory note, it must be intended by parties to be negotiable and pass from hand to hand. Where document executed by person is merely acknowledgment in false name of lady, of state of account between her husband and executant and never intended to leave her custody or that of her husband, it is not promissory note and Art. 73, Limitation Act, does not apply. 1939 Sind 281 (286, 287) [AIR V 26]: ILR (1939) Kar 632 (DB).

[7] Where document purporting to be 'note on demand' recited that certain sum of money was due from defendant to plaintiff and thereafter recorded that as defendant was at that time unable to pay money, he agreed to pay interest specified in document—*Held*, that document was not promissory note but merely acknowledgment coupled with agreement to pay interest. 1931 All 302 (303) [AIR V 18] (DB).

[8] Debtor executed deed acknowledging that certain items of money mentioned therein had been borrowed and that executant had to repay them on demand—*Held*, that there was no promise to pay but only admission of liability to pay. Document was not, therefore, promissory note. 1938 All 619 (620) [AIR V 25].

[9] Mere use of words "I promise to pay" does not necessarily make instrument promissory note. Where the parties did not intend document to be negotiable instrument but purported to incorporate only the terms of an oral agreement, it is not a promissory note. 1941 Nag 1 (1) [AIR V 28]: ILR (1942) Nag 126. (It can be validated by levy of penalty if insufficiently stamped.)

[10] A promissory note written on a hundi paper and attested but not made payable to bearer or order is a bond falling within the purview of S. 2 (5) (b), Stamp Act. 1932 Lah 22 (23) [AIR V 19] (DB).

[11] A document executed by the debtor was as follows: "for making your account of the sarkat I will come on date 22-11-1936 to your place and will give (make the payment)". *Held*, that the document was not a promissory note as there was no promise that the money would be paid out of any particular fund, or upon any condition or contingency. The document operated as an acknowledgment of liability with a promise to pay the amount found due on taking accounts. 1947 Nag 145 (150) [AIR V 34 C 43]: ILR (1946) Nag 796 (DB).

[12] A clause in a promissory note that if the promisor fails to pay, he and his properties shall be liable for the principal, interest and all damages consequent on such default does not amount to an agreement making the liability of the promisor conditional. It merely

shows what the consequence of non-payment on demand would be and does not qualify the operation of the note. The intention of the parties is to make a promissory note and not a bond or agreement. 1955 Trav-Co 141 (144) [AIR V 42 C 51]: ILR (1954) Trav-Co 1196 (DB).

[13] An entry in a khata, showing the balance due is only a receipt cannot be held to be a promissory note by the mere fact that there is an agreement as to interest or as to the manner of repayment. 1950 Ajmer 4 (4) [AIR V 37 C 4].

[14] A piece of paper which merely contains a signature, with the words Rs. 150 on a one anna stamp, cannot be taken to create any liability on the part of the signatory and is no evidence of any loan having been contracted and is certainly not a promissory note as defined by the Negotiable Instruments Act. There being no promise to pay and no acknowledgment of any liability, nor any admission of having borrowed, the paper cannot be treated as a document creating any liability in favour of the holder thereof. 1953 Orissa 104 (104) [AIR V 40 C 48].

**12. Original cause of action, suit on.—**

[1] When person lends money to another, former can always sue latter for money as for money lent, whether there is promissory note executed contemporaneously with loan or at any time thereafter on account of it. As between actual lender and actual borrower, promissory note is collateral security, and lender can therefore always sue on original consideration, disregarding security. Promissory note in such case contains express promise to repay which is implied in loan itself. There can be no question of merger of original consideration in promissory note so as to make promissory note only available cause of action. Where fresh promissory note is executed in lieu of old, novation, is of promissory note and not of loan. Liability under original loan is independent of promissory note and can no more be extinguished by execution of fresh promissory note than original debt can be by substitution of new security. 1945 Cal 268 (275) [AIR V 32] (DB).

[2] Loan independent and completed and before execution of promissory note—Promote found to be inadmissible owing to some defect—Creditor can sue on original consideration. 1937 Cal 241 (242, 243) [AIR V 24].

[3] Defendant denying execution and thumb mark not proved to be his—No proof of loan can be allowed aliunde. 1940 Lah 329 (331, 332) [AIR V 27].

[4] Promissory note executed for amount actually due on previous transactions but found to be manufactured and not genuine—Plaintiff, a paradanashin lady held entitled to fall back on original loan. 1938 All 504 (507) [AIR V 25]: ILR (1938) All 773 (DB).

[5] Promissory note understamped—Promissory note and transaction of loan taking place simultaneously—Promissory note held was mere collateral security—Suit on basis of original loan held was maintainable. 1953 All 535 (538) [AIR V 40 C 260] (DB).

## 5. "Bill of exchange."

A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

### Section 4 — Note 12 (contd.)

[6] The defendant who owed a sum of Rs. 1,117 to the plaintiff on account of certain transactions with him, executed a pronote for Rs. 1,000 and sent it to the plaintiff towards the amount due to him as per the transactions. The plaintiff brought a suit for recovery of the amount due to him on the original transactions. The pronote did not show on the face of it that it was in discharge of the entire transactions between the plaintiff and the defendant on the footing of which the suit had been filed. On the other hand the pronote had been worded as if loan had been taken from the plaintiff by the defendant on that date and thus pronote had been executed on that account. *Held* that the original claim had not merged in the promissory note which was nothing more than an instrument of conditional payment without barring recourse to the original debt. Hence the suit on the original cause of action was maintainable. 1956 Mad 156 (157) [AIR V 43 C 43].

[7] Defendant executing hundi in favour of *P* on *A* — *P* endorsing hundi in favour of *C* and also naming *P* as drawee in case of dishonour by *A* — Dishonour by *A* and *C* receiving payment from *P* — *P* making payment to *C* and receiving back hundi — *P* transferring hundi to plaintiff — Suit by plaintiff is maintainable. 1959 Raj 84 (85) [AIR V 46 C 27]; ILR (1959) 9 Raj 177.

[8] Where *A*, who owes money to *B* on account of price of paddy supplied to him, gives to *B* a cheque for the amount due, to be presented at a certain bank on a certain date but the cheque is dishonoured by the bank on presentment after due date, then *B* can sue upon original consideration and get a decree for the recovery of that amount. 1954 Orissa 124 (125) [AIR V 41 C 36]; ILR (1954) Cut 46 (DB).

[9] When a promissory note is given by the borrower to the lender in connection with the loan either at the time when the loan is contracted or afterwards it becomes either a collateral security or a conditional payment according to the intention of the parties. In the former case, the lender is entitled to sue upon the original consideration independently of the security and without regard to any rights he may possess under the negotiable instrument. 1950 Pat 493 (497) [AIR V 37 C 126]; 29 Pat 668 (DB).

[10] For suits on promissory notes not stamped or insufficiently stamped *see* Stamp Act, S. 35.

**13. Evidence and proof.**—[1] Promissory note executed by deceased—Suit against legal representative—Execution by deceased denied and note alleged to be forgery—Validity and due execution of note must be proved with strictness. 1956 Rang 399 (400) [AIR V 23] (DB).

[2] Where plaintiff sues on hand-note written on one of leaves of his *bahi*, and hand-note is proved to be genuine, suit must be decreed. Question whether book is kept in regular course of business is immaterial. 1936 Pat 498 (498) [AIR V 23] (DB).

[3] If a promissory note is to replace the contract, or if the promissory note is only contract between the parties, the fact that the loan and the promissory note were not executed simultaneously will not make any difference and the promissory note will be the exclusive evidence of the contract; and if for any reason the note cannot be proved, the lender must lose his money. 1955 Sau 74 (77) [(S) AIR V 42 C 27] (DB).

[4] While a suit on a pronote is *prima facie* one on a negotiable instrument and not on the debt as such, the fact of its being a suit on the debt can be allowed to be made out on evidence. 1955 N U C (Orissa) 5690 [AIR V 42].

[5] Where the promissory note did not show in whose favour it was executed, the scribe was not examined, there were several blanks in the promissory note and no names were mentioned against the thumb impressions: *Held* that the document was not a genuine document and the suit could not be decreed on the basis of it. 1955 N U C (Ajmer) 4785 [AIR V 42].

[6] Promissory note or letter evidencing deposit — Letter by debtor to creditor — Letter held to be evidencing deposit and not pronote. 1955 NUC (Mad) 3942 [AIR V 42].

[7] A promissory note was as follows:— "I have at this time borrowed Rs. 300 . . . I shall pay you this amount . . . with interest at eight annas p.c. per mensem on demand and hence, therefore, within these few sentences by way of a stamped promissory note so that they may be of use in time of need." *Held* that the above expressions included all the substantial terms of the contract of loan and therefore, no oral evidence to prove the loan transaction was admissible. 1952 All 509 (509) [AIR V 39].

[8] Entry in *A*'s khata showing that amount for which promissory note was written in favour of *A* by *B* was due by *B* to *A* — Promissory note is satisfactorily proved. (53) ILR (1953) Hyd 138 (140) (DB).

### Section 5 — Note 1

[1] The Act deals only with promissory notes and bills of exchange and the distinction between these instruments is that in a promissory note the executant promises himself to pay, in a bill of exchange he directs another to pay. There are two parties to a promissory note and three to a bill of exchange. 1910 Nag 39 (39) [AIR V 6].

[2] The maker of promissory notes unconditionally undertakes to pay whereas the



A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only.

#### Section 5 — Note 1 (contd.)

maker of a bill of exchange or hundi gives an unconditional order directing a certain person other than himself to pay. The liability of the maker of a promissory note is absolute whereas the obligation of the drawer of a bill of exchange is conditional since he becomes surety for payment by drawee. The maker of the pronote becomes the principal debtor whereas the drawee of a bill of exchange on acceptance becomes the principal debtor as he accepts the primary liability to pay according to the tenor of the bill of exchange. It is only on drawee's failure to pay that the drawer would be liable as his surety. 1936 Nag 260 (262) [AIR V 23] : ILR (1939) Nag 601.

[3] There is nothing in S. 5 to show that if the drawer and drawee be the same person the instrument cannot be described as a bill of exchange. No doubt where drawer and drawee is the same person that person is not entitled to treat the instrument as a bill of exchange but the holder of the bill may treat it as a bill of exchange. 1930 Pat 239 (240) [AIR V 17] : 9 Pat 717 (DB).

[4] Although there is no provision in the Act specifically allowing post-dated cheques like S. 17 (2) of English Bill of Exchange Act of 1882, there is nothing forbidding them, and para 2 of S. 5 contemplates the making of a bill of exchange payable at a future date. 1942 Cal 562 (563) [AIR V 29] (DB).

[5] An instrument purporting to be a promissory note becomes a bill of exchange on acceptance of a third party, though the instrument is not addressed to him and he is not named as drawee, provided his acceptance is not inconsistent with the address. No party can be made liable as acceptor of bill addressed to another but where no party is named in the address, the acceptor may be deemed, by his endorsement of acceptance, to have admitted himself to be the party addressed. 1930 Cal 697 (699) [AIR V 17] : 57 Cal 695 (DB).

[6] A document written on a paper which was described as a "Hundi" in print was in the following form :—"Forty five days after date without grace we jointly and severally promise to pay to the order of J, the sum of one thousand rupees only for value received in cash and that with interest at 3 per cent

per annum after due date." In the corner at the top was the endorsement "Accepted payable on the date 23rd September." Below this endorsement there were two signatures. It was held that the document was a bill of exchange. 1930 Cal 697 (698) [AIR V 17] : 57 Cal 695 (DB).

[7] A 'Shahjog' hundi does not technically fall within the definition of a bill of exchange. 1960 Punj 157 (159) [AIR V 47 C 53] (DB).

[8] A banker's draft is a bill drawn either on demand or otherwise by one bank on another in favour of third party or by one branch of a bank on another branch of the same bank or by the head office on a branch or vice versa. It is a bill of exchange. 1949 East Punj 373 (382) [AIR V 36 C 96].

[9] A banker's draft is a bill of exchange and as such it is a negotiable instrument. The issue of a draft is regarded in banking practice as a matter of purchase and ordinarily the relationship between the holder of a Demand Draft and the bank issuing it is that of debtor and creditor. 1956 Cal 615 (616) [50 AIR V 43 C 175] (DB).

[10] A demand draft is a bill of exchange drawn by a bank on another bank, or by itself on its own branch, and is a negotiable instrument not offending the Reserve Bank of India Act. It is very nearly allied to a cheque. 1951 Mad 910 (913) [AIR V 38 C 326] : ILR (1952) Mad 22 (DB).

[11] A demand draft issued by a bank on its branch or vice versa is not a cheque nor a bill of exchange. Demand draft may be a bill of exchange if it is drawn by one bank on another bank. 1948 Bom 1 (3) [AIR V 35 C 1] : ILR (1947) Bom 643.

[12] According to the definition of the term 'bill of exchange' a draft is a bill of exchange and if it is a bill of exchange it becomes a negotiable instrument as defined in S. 13 of the Negotiable Instruments Act. To remove all doubts on the point the Legislature added S. 85-A to the Act which makes a specific reference to drafts and brings them at par with bills of exchange. 1960 All 238 (240) [AIR V 47 C 53].

[13] An essential character of a bill of exchange is that it shall contain an order to accept or to pay and that acceptor should accept it. And in the absence of such a direction to pay, the document will not be a bill of



**6. "Cheque."**

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

**7. "Drawer." "Drawee."**

The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".

**"Drawee in case of need."**

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".

**Section 5 — Note 1 (contd.)**

exchange or a hundi. 1955 Cal 562 (564) [AIR V 42 C 175]; ILR (1956) 2 Cal 318.

[14] A chitthy containing an unqualified promise by the drawer to pay a definite amount on a certain day cannot be called a hundi. 1950 Kutch 83 (84) [AIR V 37 C 65].

[15] Document ran as follows:—I agree to pay you or to your order on demand the sum of Rs. 10,000/- only being the amount my brother and I have agreed to pay you for bringing about the sale to the I. L. T. D. Company Ltd. of Guntur of our site in Guntur with interest thereon at 12 per cent. from this day till realisation—*Held* that party could not call in aid para 2 of S. 5 because time for payment was not postponed. 1959 Andh Pra 370 (373) [AIR V 46 C 107] (DB).

[16] A hundi payable at sight is a bill of exchange as defined in S. 5. 1953 Ajmer 34 (34) [AIR V 40 C 37].

**Section 6 — Note 1**

[1] A cheque is a peculiar sort of instrument in many ways resembling a bill of exchange, but in some entirely different. In the ordinary course, it is never accepted, it is not intended for circulation, it is given for immediate payment, it is not entitled to days of grace. In addition, a cheque is presented for payment, whereas a bill in the first instance is presented for acceptance unless it is a bill on demand. A bill is dishonoured by non-acceptance, this is not so in the case of a cheque, because the holder of a cheque, as between himself and the drawer, has no right to require acceptance. (84) 9 Moo P C 46 (69, 70) + 1944 P C 58 (60) [AIR V 31]: 71 Ind App 124: I L R (1944) Kar (P C) 246.

[2] There is no provision in the Negotiable Instruments Act as to a post-dated instrument such as there is in the English Bills of Exchange Act, 1882, S. 13 (2). 1944 P C 58 (60) [AIR V 31]: 71 Ind App 124: I L R (1944) Kar (P C) 246.

[3] Cheque is Bill of Exchange drawn in special manner and negotiable. Mere fact that date of payment of cheque is postponed to future date does not make cheque payable "otherwise than on demand". It is payable on demand after due date. Consequently holder in due course of cheque without notice of any defect is entitled to payment from drawer. 1934 All 695 (695) [AIR V 21] + 1925 Cal 1007 (1009) [AIR V 12]: 52 Cal 677.

[4] In India post-dated cheque is admissible in evidence although it bears stamp

representing duty payable in respect of cheque, and not *ad valorem* duty payable in respect of bill of exchange. 1925 Cal 1007 (1009) [AIR V 12]: 52 Cal 677.

[5] Post-dated cheques are as much negotiable as cheques for which payment is due immediately on presentation. (56) 1956-1 Mad L J 471 (472).

[6] Section 6 defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. The drawer must be certain, i.e., the person who enters into the contract should be pointed out with certainty and his signature should be obtained. Acceptance of an instrument not signed by the maker does not make it a good bill. 1957 Tripura 37 (42) [AIR V 44 C 14].

[7] A cheque is under the law a negotiable instrument. Its negotiability can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. 1952 All 590 (591) [AIR V 39]: I L R (1951) 2 All 674 (DB).

[8] A demand draft issued by a bank on its branch or vice versa is not a cheque. 1948 Bom 1 (3) [AIR V 35 C 1]: I L R (1947) Bom 643.

[9] A draft is as much a bill of exchange as a cheque and there is hardly any difference between a dishonoured draft and a dishonoured cheque issued by a bank on itself. It is very nearly allied to a cheque and the difference between it and a cheque consists largely in two facts; firstly, that it can be drawn only by a bank on another bank and not by a private individual as in the case of cheques and secondly that it cannot be so easily countermanded as a cheque either by the person purchasing it or by the bank to which it is presented. 1957 Assam 133 (137) [(S) AIR V 44 C 34] (DB).

[10] A payment under a cheque relates back to the date of the cheque. So it is immaterial when a cheque is cashed. What is material is when the cheque was given and the payment is made and not when the cheque was cashed at the instance of the creditor. 1952 Bom 306 (309) [AIR V 39]: I L R (1953) Bom 81 (DB).

**Section 7 — Note 1**

[1] Throughout the Act, a clear distinction has been made between the words "maker" and "drawer", the former word being used in a more general sense as applying to promissory notes, negotiable instruments and cheques,

### "Acceptor."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

### "Acceptor for honour."

\*[When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

### "Payee".

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

[a] *Substituted* for the words "When acceptance is refused and the bill is protested for non-acceptance" by the Negotiable Instruments Act, 1885 (II of 1885), S. 2.

### Section 7 — Note 1 (contd.)

while the word "drawer" is restricted to bills of exchange or cheques only and is nowhere used in connection with promissory notes. 1937 Lah 259 (260) [AIR V 24] : ILR (1937) Lah 580 (DB). (AIR 1935 Lah 153, *Dissented from.*) \* 1937 Lah 892 (893) [AIR V 24] (DB). (AIR 1935 Lah 153, *Dissented from.*)

[2] Person named as drawee cannot substitute third person as drawee. ('09) 1909 Pun Re No. 71 p. 230 (235, 236) (DB).

[3] In the case of a cheque, acceptance is not necessary to create a liability to pay as between the drawer and drawee bank. But there is no objection to the acceptance of a cheque if the holder likes to take it in lieu of payment. On special and unusual occasions, bankers do accept cheques drawn on themselves, but such acceptance would require strong and unmistakable words. 1944 P C 58 (60, 61) [AIR V 31] : 71 Ind App 124 : ILR (1944) Kar (PC) 246. (Dictum in Robson v. Bennet (1810) 2 Taunt 388 (396), *Dissented from.*)

[4] Certification or making of a post-dated cheque by the drawer bank with words "marked good for payment" is not an acceptance within the meaning of the English Bills of Exchange Act, 1882, or the Indian Negotiable Instruments Act, 1881, or the Common Law. There is no custom in Calcutta to identify certification with acceptance. Even if the certification is construed according to its terms, as a contract to pay, the certification of a post-dated cheque, no custom being established, cannot be regarded as an enforceable contract. For this, there should be a privity of contract. Nor can it be construed as an estoppel entitling the holder in due course to found his claim because the presentation, if any, relates to the future. 1944 P C 58 (63, 64) [AIR V 31] : 71 Ind App 124 : ILR (1944) Kar (PC) 246. (AIR 1942 Cal 562, *Reversed.*)

[5] There cannot be, apart from any mercantile usage, an oral acceptance of the hundi, much less an acceptance by conduct, where at least no question of estoppel arises. Hence the mere fact of possession of a bill by the drawee is not sufficient to constitute valid acceptance. 1954 S C 554 (557) [AIR V 41 C 127] : 1955-1 S C R 503\* 1919 Lah 85 (87) [AIR V 6] : 1919 Pun Re No. 29 (DB)\* 1924

All 129 (130) [AIR V 11]. (Such local custom must be specifically set up and proved by evidence.)\* 1930 Lah 471 (471) [AIR V 17] (DB). (Oral acceptance of bill does not make so called acceptor liable to holder of bill.)\* 1933 Nag 389 (390) [AIR V 20]. (There is no usage in Bombay recognising oral acceptance.) [See also 1947 Sind 140 (141) [AIR V 34 C 49] : ILR (1946) Kar 355 (DB). (Shibhog hundi is not a negotiable instrument within S. 13 of Act — No written acceptance necessary — Can be accepted orally under local usage.)]

[6] Mere writing of figures on hundi cannot amount to signing of assent by drawee unless it can be proved that it amounted to acceptance according to mercantile usage of locality. 1930 Lah 471 (472) [AIR V 17] (DB)\* 1932 Lah 274 (275) [AIR V 19] : 13 Lah 51 (DB).

[7] What is requisite for fixing the drawee with liability under S. 32 is the acceptance by him of the instrument and not an acknowledgment of liability. As the law prescribes no particular form for acceptance, there should be no difficulty in construing an acknowledgment as an acceptance but then, it must satisfy the requirements of S. 7, and must appear on the bill and be signed by the drawee. 1954 S C 554 (557) [AIR V 41 C 127] : 1955-1 S C R 503. (Assuming that a plea of discharge of a hundi implies an acknowledgment of liability thereunder that is not sufficient to fix the liability on the drawee under S. 32 when the acknowledgment is neither in writing nor signed by him.)

[8] Where hundi has been dishonoured and returned but conditional payment is made, there is custom that amount paid should be refunded unless hundi is again presented within 4 days. 1933 Nag 389 (390) [AIR V 20].

[9] Where payee signs his name and makes it payable to some other person, that other person does not become payee within meaning of S. 85. 1928 Bom 262 (264) [AIR V 13] : 50 Bom 118.

[10] A sale deed which created a trust in favour of a certain community was executed in favour of three persons as wahiwardars and karindas of that community. Two of the wahiwardars acting for and on behalf of the community were payees under a promissory

## 8. "Holder."

The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

### Section 7 — Note 1 (contd.)

note the consideration for which came out of the trust. In a suit upon the promissory note by the sole living wahiwardar: *Held* that the plaintiff was a trustee of the trust and not an agent of the community, that a trustee can be a payee and since the plaintiff was named in the promissory note he was a payee within the meaning of S. 7 and there was no uncertainty in the matter and that, therefore, the plaintiff had a right of suit. 1948 Nag 60 (62) [AIR V 55 C 21]; I.L.R. (1947) Nag 402 (DB).

[11] Joint payees were recognised even before amendment in 1914 of the Negotiable Instruments Act 1881, but not payees in alternative. 1921 Mad 122 (123) [AIR V 8 (DB)].

[12] A promissory note was executed to K.S. A.V. Rammah Raj and firm which was carrying on business under style of K.S. A.V. — *Held*, in accordance with usage prevailing in Burma and India among Nattukottai Chettars by which Chettiar firm described generally by initials of firm prefixed to name of partner and agent, that firm was payee under note and appellant who was sole proprietor of it could sue on it. 1935 Rang 81 (82) [AIR V 22; 13 Rang 87 (DB)].

[13] The payee of a cheque is not an assignee of money in the hands of a banker. 1953 All 637 (639) [AIR V 40 C 318]; I.L.R. (1954) 1 All 268.

### SECTION 5 — SYNOPSIS

1. "Person entitled in his own name."
2. Benamidars and beneficiaries.
3. Joint Hindu family.
4. Transferees and assignees.

#### 1. "Person entitled in his own name."—

[1] Words "in his own name" in S. 5 do not and cannot mean personal name of person and any class of assumed trade name would also fall within these words. 1940 Bom 164 (165) [AIR V 27; I.L.R. (1940) Bom 153 (DB) + 1951 Hyd 79 (2) (Pr 8) [AIR V 38 C 51]; I.L.R. (1951) Hyd 448 (DB). (The Court entitled to look into the evidence alimunde and surrounding circumstances to discover the capacity of the endorser.)

[2] Where a promissory note is executed in favour of joint Hindu family firm, a suit on such promote can be brought by all the individual members who comprised the firm at the time of the execution of the promote. Such members can be said to be the holders of the note or holders in due course under Ss. 8 and 9. 1939 Bom 147 (148, 149) [AIR V 26].

[3] In relation to a promote not payable to bearer, "person entitled in his own name" can only mean the person named in the note, that is the payee or the endorsee. 1928 Nag 54

(55) [AIR V 15 + 1930 Mad 197 (199) [AIR V 17].

[4] Promote endorsed in blank is payable to bearer who is the "holder" of the note. 1928 Mad 1238 (1243) [AIR V 15 (DB)].

[5] Reading Ss. 8 and 78 together it is clear that the person to whom payment should be made in order to discharge the maker or the acceptor from all liability under the instrument is the holder of the instrument or his accredited agent such as a banker acting as an agent for collection. The holder of a promote is the person who is entitled in his own name. The true "holder" does not include a person who though in possession of the instrument has not the right to recover the amount due thereon from the parties thereto. 1947 All 52 (53, 54) [AIR V 34 C 28]; I.L.R. (1947) All 311 (DB) + 1920 Upp Bur 48 (48) [AIR V 7]; 3 Upp Bur Rul 200.

[6] Where the holder has paid consideration for the note he can recover the amount due on it even if it is originally made without consideration. 1935 Oudh 264 (264) [AIR V 22]; 10 Luck 732 (See also S. 45) + 1939 Oudh 107 (108) [AIR V 26; 14 Luck 438 (DB)].

[7] Promote in favour of agent — Principal can sue on it without assignment. 1925 Mad 1130 (1131) [AIR V 12 (DB)].

[8] Surety for payee of promissory note in respect of different transaction without making any payment of money, is not holder in due course of promissory note through endorsement to him by payee. (12) 14 Ind Cas 813 (813) (Low Bur).

[9] In case of promissory note made payable to two or more persons, word "holder" means all payees and not one who may be in possession of it. 1937 Rang 227 (229) [AIR V 24]; 1937 Rang L.R. 1 (DB).

[10] Son lending father's money with his consent and obtaining promote in his name is holder of that promote. 1920 Upp Bur 38 (39) [AIR V 7]; 3 Upp Bur Rul 204.

[11] Son cannot sue on promote in favour of his father who has renounced the world. 1954 Bom 585 (587) [AIR V 21; 58 Bom 538 (DB)].

[12] Suit on negotiable instrument by a single heir of the promisee is not maintainable. (20) 12 Mad L.W. 532 (533).

[13] Insolvent can sue on promote in his favour, if Official Assignee does not object. (12) 6 Low Bur Rul 174 (175) (DB).

[14] A borrowing from D branch of Y Bank — Document executed in favour of managing agents — Endorsement of note by Bank in favour of plaintiff — Plaintiff suing on it — Bank and A made defendants — *Held* the fact that document was executed in favour of managing agent did not mean that managing agents were holders of promissory note and the plaintiff entitled to sue on note. 1939 Cal 256 (257) [AIR V 26].

**Section 8 — Note 1 (contd.)**

[15] Common manager appointed for an estate under S. 301, Succession Act by an order of Court, can sue on a promissory note for a debt due to the estate although the note has not been endorsed and delivered to him. 1941 Pat 403 (404) [AIR V 28].

**2. Benamidars and beneficiaries.** — [1] Benamidar is holder, and is entitled to sue. His allegation in plaint that he was holder for value cannot deprive him of his right to recover on instrument. 1930 Rang 243 (244) [AIR V 17] (DB).

[2] Promissory note executed in favour of the benamidar—Promisor cannot allege that holder of the note is not beneficial owner—Holder of the Note alone whose name appears on it has a right to sue on the hand-note—Beneficial owner cannot sue on a hand-note. 1937 Pat 100 (102) [AIR V 24] : 16 Pat 74 (FB). (*Overruling*, AIR 1934 Pat 382.)

[3] Term "holder" does not include beneficial owner. To entitle beneficial owner to sue he must be able to obtain discharge from maker—Suit by beneficial owner to which holder is not party is not maintainable. 1947 All 52 (56) [AIR V 34 C 28] : I L R (1947) All 311 (DB) \* 1957 Pat 380 (Prs 2, 3, 4) [(S) AIR V 44 C 114] : 36 Pat 724 (FB). (AIR 1930 Pat 313 : AIR 1932 Pat 346 and AIR 1934 Pat 85 *Overruled* : AIR 1928 Cal 148, A I R 1957 Nag 65 and A I R 1952 All 245 (FB), *Dissented from*.) \* 1950 Pat 493 (Prs 1, 5, 13) [AIR V 37 C 126] : 29 Pat 668 (DB), \* 1922 All 70 (70) [AIR V 9] : 44 All 290 (DB) \* 1915 All 261 (262) [AIR V 2] \* 1935 Mad 312 (313) [AIR V 22] \* 1928 Nag 54 (55) [AIR V 15]. (The application of the doctrine of benami transactions to negotiable instruments would introduce an element of uncertainty into them and hamper commerce.)

[4] Right to institute suit on negotiable instrument does not vest merely in holder—Beneficiary or true owner has right to sue—Holder is necessary party—Suit by holder on her own behalf and on behalf of minor sons who are owners of debt due under promissory note is competent. 1956 Raj 174 (Pr 10) [AIR V 43 C 55] : ILR (1956) 6 Raj 698 (DB).

[5] Benami transactions are not recognised in connection with negotiable instruments—Parties to negotiable instrument cannot show that they acted benami through others. 1949 Nag 21 (Paras 11, 12) [AIR V 36 C 14] : ILR (1948) Nag 299 (DB).

[6] Hundi—Suit by undisclosed principal of payee of hundi on original transaction—Benamidar holder who has not given valid discharge not impleaded as party—Suit not maintainable. 1949 Nag 21 (Prs 14, 15) [AIR V 36 C 14] : ILR (1948) Nag 299 (DB).

[7] In a suit on a hand-note it is not open to the defendant to plead that the holder of the note, namely the payee, is not the person entitled to recover on it and the defence that payments have been made to some one who is not the payee cannot be taken into consideration. 1940 Pat 377 (379) [AIR V 27] : 19 Pat 404 (DB) \* 1927 All 463 (463) [AIR V 14] : 49 All 457 \* 1931 Cal 387 (389) [AIR V 18] : 58 Cal

752 (DB) \* 1928 Cal 148 (151) [AIR V 15] : 55 Cal 551 (DB). (If a third person sues the maker or acceptor of a promote, it would be a good defence to plead a discharge by the holder or to say that unless the plaintiff gets a discharge from the holder, the defendant is not liable to pay. But the true owner, a person other than the holder, is not prohibited by reason of S. 78 from bringing a suit.) \* 1935 Mad 880 (882) [AIR V 22]. (To make it possible for the real holder to sue direct would make it necessary for the maker to contest a matter, viz., the relationship between benamidar and 'real' holder about which he could not possibly know anything.) \* 1916 Mad 679 (679) [AIR V 3] (DB) \* 1932 Nag 23 (24, 25) [AIR V 19] : 27 Nag L R 327. (The real owner of the note has to fall back on the original consideration.) \* 1939 Pat 347 (348) [AIR V 26].

[8] Suit by A against B and C, claiming decree against B as executant of promissory note—Claim against C in the alternative that A handed over promote to C for collection and that if C collected the amount from B the decree should be passed against C for the amount.—B and C setting up plea that A was benamidar and that since payment was made to C who was the beneficial owner thereof, the suit should be dismissed—*Held* that although it was not open to the promisor to contend that some one other than payee on the face of the pro-note was the real owner, the question as to who was entitled to the money could be gone into, in view of the fact that C had been impleaded as party. 1957 Mad 573 (Pr 6) [AIR V 44 C 168] (DB).

[9] As between the payee and third persons, parol evidence is admissible to show that payee is only a benamidar for another. Hence, a suit for declaration that a promissory note under which B is the payee is liable to be attached in execution of a decree against A on ground that the note is taken benami in the name of B for A, is maintainable. 1935 Mad 181 (182, 183) [AIR V 22] : 58 Mad 693 (FB).

[10] A plea of benami is only a plea in the nature of a resulting trust and a payee, who is in the position of a trustee cannot insist that the beneficiary should be precluded from proving that the payee is only a trustee. 1935 Mad 181 (183) [AIR V 22] : 58 Mad 693 (FB).

[11] A suit by the sons of a holder of a promissory note who had suddenly disappeared but who is not proved to be civilly dead, for the recovery of the amount due would not be maintainable. (50) 1950 All L Jour 610 (615).

[12] The maker of a promissory note can obtain the discharge of a debt by payment to the holder alone and to none else though the holder is a benamidar. A person, who is not the holder of the promissory note cannot maintain a suit for the recovery of the amount due thereon even though the holder is admittedly the benamidar and is impleaded in the suit. 1950 Pat 493 (Prs 1, 5, 13) [AIR V 37 C 126] : 29 Pat 668 (DB).

**3. Joint Hindu family.**—[1] Coparcenary can be described as holder of note if it was made in its collective or business name. 1940

## 9. "Holder in due course."

"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if "[payable to order,]

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

[a] Substituted for "payable to, or to the order of, a payee," by the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919), S. 2.

### Section 8 — Note 3 (contd.)

Bom 184 (167) [AIR V 27] : 1 L R (1940) Bom 153 (DB).

[2] Pronote in favour of joint family firm. Members comprising firm at the time of execution of pronote are holders of note. 1939 Bom 147 (148, 149) [AIR V 26].

[3] No one can have an interest in a pronote by birth or by being a member of coparcenary. A pronote unlike a debt devolves by succession and by survivorship, and the heirs of a deceased holder may recover on the note as his legal representatives after obtaining a succession certificate. 1938 Bom 451 (453) [A I R V 25] (DB).

[4] Bond being in name of manager, other members do not become co-promissee. 1918 Mad 29 (30) [AIR V 5] : 41 Mad 637 (DB).

[5] Surviving coparcener of holder of note, cannot sue upon it. 1939 Sind 144 (145) [A I R V 26] : 1 L R (1939) Kar 405 (DB).

[6] Joint Hindu family consisting of father and son—Father advancing debt from joint family funds but pro-note taken in name of son—After son's death debtor making payment to father and obtaining discharge—Widow of son bringing suit on pronote—Suit held not maintainable. 1949 Mad 854 (Prs 2, 3) [A I R V 36 C 385].

4. Transferees and assignees.—[1] Transferee under sale deed of negotiable instrument is not holder within meaning of S. 8. 1935 All 1041 (1042) [A I R V 22] (DB) + 1939 All 279 (280) [AIR V 26] : 1 L R (1939) All 419 (DB).

[But see 1934 Cal 549 (550) [A I R V 21] : 61 Cal 425 (DB).]

[2] Pronote only part of stated consideration passing—Transfer of the note by endorsement—Transferee can recover the amount which actually passed as consideration. 1952 All 648 (648) [AIR V 19] (DB).

[3] The right of suit on a promissory note vests in the person who can give a valid discharge to its maker or acceptor. Right of the person entitled to the money to institute the suit is irrespective of any indorsement in the document in his favour and is recognised on the basis of the vesting of the ownership of the money in the plaintiff in the absence of a holder. 1952 All 245 (Pr 3, 14) [A I R V 39] : 1 L R (1952) 2 All 178 (FB). (Partition—Promissory note allotted to B—Suit by B is maintainable—AIR 1922 All 70, *Overruled*.)

[4] Where on the partition of a joint Hindu family a debt evidenced by a pronote falls to the share of a member, his right to sue is not dependent upon either an endorsement or an assignment under S. 130 of the Transfer of Property Act and the suit is to be regarded

as based on the original debt irrespective of the pronote. 1937 Mad W N 134 (134) + (11) 21 Mad L Jour 80 (82) (DB) + 1952 All 245 (Prs 3, 14) [A I R V 39] : 1 L R (1952) 2 All 178 (FB). [A I R 1922 All 70, *Overruled*] + 1935 Mad 473 (474) [A I R V 22]. (Note in favour of B Award to A, on partition—Absence of endorsement by B—Held, that the award operated as transfer and A has right to sue as transferee.)

[5] The Act prohibits negotiation of an instrument except in the manner specified by it but does not prohibit the assignment of an instrument. The difference is that in the latter case, the instrument is taken subject to all defects but not in the former. 1932 Nag 23 (25) [AIR V 19] : 27 Nag L R 327.

[6] Assets and liabilities of concern transferred—Promissory notes in favour of transferor also gets transferred and transferee gets entitled to money on promissory notes, even though transfer is not by endorsement.

In case of transfer of negotiable instruments, otherwise than by endorsement assignee gets in the bill as a chattel no more than the right, title and interest of assignor whereas in case of transfer by endorsement, assignee will have all rights and advantages of a holder in due course of a negotiable instrument. Where title passes by transfer deed, the transferee becomes a holder under S. 8 and is entitled to negotiate it and impart a title to his assignee. 1954 Mad 820 (Prs 5, 6, 8) [AIR V 41 C 274].

[7] An assignee of a pronote can sue on it though his name is not in the instrument. 1932 Nag 23 (25) [A I R V 19] : 27 Nag L R 327 + 1920 Upp Bur 48 (48) [A I R V 7] : 3 Upp Bur 200.

[8] Hundis endorsed to Bank by payee—Failure of payment by maker—Payee paying bank—Receipt of money endorsed on hundis—Hundis returned to payee by bank without re endorsement—Subsequent endorsement to plaintiff by payee—Plaintiff has right to sue. 1957 Mad 691 (Pr 3) [AIR V 44 C 218] : 1 L R (1958) Mad 1 (DB) + 1958 Andh Pra 33 (Prs 6, 8) [AIR V 45 C 9] : 1 L R (1957) Andh Pra 439 (DB).

### SECTION 9 — SYNOPSIS

1. Holder in due course.
2. Consideration.
3. Before the amount became payable.
4. Defects in title.
5. Fraud.
6. Forged endorsement.

## Section 9 (contd.)

**1. Holder in due course.**—[1] To constitute a person a holder in due course it is necessary that (1) he must be a holder for consideration (2) the instrument must have been transferred to him before it became payable, and (3) he must be a transferee in good faith. 1923 Lah 638 (640) [AIR V 10] (DB).

[2] Under S. 9, in order to be a holder in due course three conditions are necessary, viz.—(1) that the endorsee becomes the holder in due course when it is for consideration; (2) he can be an indorsee before the amount mentioned in the promissory note became payable; and (3) without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. 1957 Orissa 153 (155) [AIR V 44 C 42] : 1 L R (1957) Cut 101.

[3] Unless a person proves that he is a holder in due course within the meaning of S. 9, he cannot have any higher or superior rights against the drawer than the intermediate holders themselves would have. 1930 Mad 141 (145) [AIR V 17].

[4] Suit on pro-note—Defendant admitting that some amount is due—Plaintiff, whether he sues as holder or as holder in due course is entitled to recover same. 1940 Rang 170 (171) [AIR V 27].

[5] A person cannot sue upon a promissory note which has not been endorsed to him. 1917 Mad 512 (512) [A I R V 4] : 59 Mad 987 (FB).

[6] When negotiable instrument is handed over by debtor to his creditor in discharge of pre-existing debt creditor becomes holder in due course. (13) 15 Bom L R 333 (338).

[7] Where in partition a promissory-note is simply allotted to a person but which note never comes into his possession, and the note is payable to a third person and not to bearer, the former person cannot be a holder in due course; that being so, he cannot make his assignees by a release deed holders in due course. 1950 Mad 197 (199) [AIR V 17].

[8] The question whether the consideration for a negotiable instrument is adequate or not cannot be the subject-matter of controversy in the suit when once it is admitted that the negotiable instrument had been executed by the defendant and there was some consideration for it. 1955 Mad 43 (44) [(S) A I R V 42 C 9] (DB).

[9] A bank which credits the customer with the amount of a cheque as soon as it paid in to his credit is usually in the position of a holder in due course of the cheque and collects the same not for the customer, but for itself. 1927 Lah 577 (578) [A I R V 14] : 8 Lah 702 (DB) \* (34) 1934 Mad W N 1306 (1307).

[10] In a suit by a holder in due course it is not permissible to go outside the note. 1942 Mad 468 (469) [AIR V 29].

[11] Where an endorsee of a promissory-note sues on the note and it is found that he is a holder in due course, evidence to prove the defence that the note has been discharged prior to the endorsement is not admissible. But if he is a mere holder he is affected by

any prior equities and the promisor defendant must be allowed to adduce proof of satisfaction of the note. 1935 Rang 156 (157) [A I R V 22].

[12] A person in whose favour a post-dated cheque has been endorsed for valuable consideration long before the due date for payment is a holder in due course, when he has no notice of any arrangement between the drawer and the endorser that the cheque should be presented only after all goods ordered for had been delivered to the drawer. (56) 1956-1 Mad L Jour 471 (472) \* 1956 Bom 618 (623) [AIR V 43 C 247].

[13] Where however a post-dated cheque is drawn by a partner in his own favour and then is endorsed for consideration in favour of a third party who is aware of the fact that the post-dated cheque has in fact been drawn by such partner in his own favour, this factor should make the third party more diligent in the matter of making some further and independent inquiries about this cheque. If he neglects to do so, he cannot claim to be holder in due course. 1956 Bom 618 (623) [A I R V 43 C 247].

[14] It is only a person who comes into possession of a negotiable instrument having paid consideration for it and being a bona fide transferee that can be a holder in due course within the meaning of S. 9. Section 9 implies and contemplates that there must be a negotiation or a transfer to the holder in due course by someone who had the authority to transfer or negotiate the negotiable instrument. The transfer and the negotiation must be of a negotiable instrument, not the transfer of an inchoate document which is not a negotiable instrument at all under the Act. 1953 Bom 290 (291) [A I R V 40 C 91] : 1 L R 1953 Bom 717 (DB).

[15] A drew a cheque on B in favour of C on 20-3-1945. C presented the cheque to B for payment on 21-3-1945 but it was returned with the endorsement that it would be honoured after collection of drawer's assets. C then negotiated the cheque with the plaintiff bank and received bill payment. The plaintiff then presented the cheque to B on 26-5-1945 but it was dishonoured on ground that the payment had been stopped by the drawer. The plaintiff thereupon sued A and C for recovery of the amount of the dishonoured cheque. Held, that the plaintiff was the holder in due course when the cheque was subsequently dishonoured on 26-5-1945. 1951 Assam 127 (128) [AIR V 38 C 60] (DB).

[16] Loan advanced on hand note by unregistered money-lender—Suit for recovery of loan—Suit is barred under Bihar Money-lenders Act (VII of 1939)—Fact that endorsee of note is holder in due course will not affect position. 1953 Pat 140 (142) [AIR V 40 C 45] : 31 Pat 484 (DB).

[17] A had executed in favour of bank B a hand note which was found to be as a collateral security for overdrawals on his current account. C who had some fixed deposit with B, in partial discharge of it, accepted transfer of that hand note. In a suit brought by him

**Section 9 — Note 1 (contd.)**

to recover the amount after the bank had gone into liquidation, it was found that the amount due under the handnote was paid by A to B under receipts. The payments were also noted in current accounts: *Ibid.*, that the liability of A had been fully discharged and that there was no necessity to endorse the payments on the handnote itself as the payments were made into the Current Account. The contention that C must be deemed to be a holder in due course because the handnote did not contain any endorsement or because it was left in the custody of B even though the liability under it had been discharged was untenable. 1956 Orissa 85 (86) (AIR V 13 C 25) (DB).

[18] A cheque expressed as payable to a particular person is a cheque payable to order as stated in Explanation 1 to S. 13. If of the Negotiable Instruments Act; and when such payee endorses it in blank it becomes payable to bearer according to Explanation 2 to S. 13. When a Bank purchases such a cheque for cash and makes a credit entry in its accounts of the payee, the Bank becomes "a holder in due course" as defined in S. 9, and it does not become merely a collecting agent. 1951 Pat 621 (622) (AIR V 38 C 177); 56 Pat 703 (DB).

[19] A promissory note payable on demand can be endorsed to a person who will be a holder in due course until demand is made for payment of the sum due under the note. 1951 Cal 55 (61) (AIR V 35 C 19); 111 R 195231 Cal 375 (DB).

**2. Consideration.** (1) The term "holder in due course" as defined in S. 9 means person who gives consideration. Therefore where the plaintiff institutes a suit on a pro-note as a holder in due course, the presumption under S. 118 (2) is that he has given valuable consideration and the burden of proving the contrary is on the defendant. 1940 Rang 170 (171) (AIR V 27).

(2) Where there is no consideration either for the pro-note or for the transfer the endorsee is not a holder in due course. 109 Mad L. Tim 463 (464).

(3) An on demand promissory note is endorsed by payee to A who stood surety for him with one B. No suit filed by B nor any payment made as surety prior to endorsement. *Held* A was not a holder in due course as there was no further consideration and mere renewal of undertaking to pay debt for which he was already surety would be no consideration. (12) 14 Ind Cas 815 (813) (Low Bur).

(4) A person holding a bill of exchange sent to him for collection with a lien on the bill is a holder for value or consideration. 1925 Bom 369 (370) (AIR V 121; 49 Bom 270).

(5) Bill of exchange transferred by maker to first holder for consideration which is not lawful—Subsequent holder not aware of taint affecting instrument becomes holder in due course and can sue maker. (13) 15 Bom L R 353 (329).

**3. Before the amount became payable.**

(1) Section 9 makes a person who has paid

consideration a holder in due course if he became the possessor of the note before the amount mentioned on it became payable. The language is not "before the amount was paid." 1917 Mad 886 (887) (AIR V 4).

(2) A promissory note payable on demand does not for the purposes of S. 9 become payable until a demand is actually made, and if there is no evidence to show that the transfer of the note was made after the demand, it is a perfectly valid transfer. 1923 Lah 638 (639, 640) (AIR V 10); (DB) + 1940 Mad 631 (632) (AIR V 27); 111 R 19403 Mad 382 (DB) + 1938 Mad 911 (912) (AIR V 25).

[But see 1917 Pat 533 (534, 535) (AIR V 4); 2 Pat 1, Jour 451 (DB).]

(3) Promissory note payable on demand assigned. Time between its execution and assignment very short. Promissory note cannot be considered to have matured on date on which it is assigned and assignee is holder in due course. 1938 Mad 911 (913) (AIR V 25).

(4) Where a note payable on demand is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. 1921 Cal 302 (303) (AIR V 8); 47 Cal 861 (DB).

(5) Where an endorser of a promissory note payable on demand is not aware that the promissory note has been discharged or that any demand was made, he must be deemed to be a holder in due course, even if as a matter of fact the endorsement in his favour was made after the discharge. 1936 Mad 879 (880) (AIR V 23).

(6) Where a maker of a promissory note payable on demand has, before there being any demand made by the payee, paid the amount without asking for the return of the promissory note, and the note is endorsed by the payee to a third person without latter's knowledge of the fact of payment, the endorsee is entitled as holder in due course, to sue the maker of the promissory note. 1940 Mad 631 (632, 633) (AIR V 27); 111 R 19403 Mad 382 (DB) (AIR 1935 Mad 300, *Overruled*).

**4. Defects in title.** (1) Endorsee aware of defect in title is not holder in due course. 1923 Mad 517 (519) (AIR V 10); 46 Mad 415 (DB) + 1930 Mad 141 (143) (AIR V 17).

(2) Where the endorsee has no sufficient cause to believe that there was any defect in the title of the person from whom he derived his title, he is a holder in due course and the presumption in S. 118 will be in favour of the endorsee. 1924 Pat 521 (522) (AIR V 11) + 1958 Mys 126 (128) (AIR V 45 C 31); 111 R 19577 Mys 35 + 1978 Bom 018 (622) (AIR V 43 C 247).

(3) The provision in S. 9 that the person must have become possessor of a cheque "without having sufficient cause to believe" is more favourable to the person who claims to have become holder in due course than the words "acting bona fide". His claim would be defeated only if it is found that there was sufficient cause for him to believe that a defect



**Section 9 — Note 4 (contd.)**

existed. If he fails to prove *bona fides* or absence of negligence, it would not negative his claim. There must be evidence of positive circumstances on account of which he ought to have believed that some defect existed. Where therefore a banker comes into possession of a bearer crossed cheque on payment, without having any reason to suspect the title of the endorsee thereof, his act does not amount to negligence and even if it amounts it does not matter and the banker becomes the holder in due course under S. 9. 1952 All 590 (593) [AIR V 39] : ILR (1951) 2 All 674 (DB).

[4] Where the plaintiff took a stale cheque in good faith for consideration without notice of dishonour and without having any reason to believe that there was any defect in the title of his transfer or who, however, was not a holder for value and the endorsement to him was fictitious, held that the plaintiff could not be regarded, as a holder in due course and his claim against the drawer must fail. 1928 All 68 (71) [AIR V 15] : 50 All 309 (DB).

[5] A person who takes an instrument evidencing a transaction which excites the suspicion that there is something wrong in the transaction does not act in good faith if he shuts his eyes to the facts presented to him and puts the suspicions aside without further inquiry and is, therefore, not a holder in due course. 1919 Low Bur 79 (81) [AIR V 6].

[6] Endorsement of a promissory note by the guardian without an indication that the guardian has endorsed it in his capacity as a guardian does not pass title to the endorsee who, therefore, is not a holder, and has no *locus standi* to sue on the pronote. 1924 Mad 617 (617) [AIR V 11].

[7] Where a payee of a promissory note executed by A and B agrees to hold A alone liable and relinquishes his claim as against B, an assignee of the note taking it with the knowledge of this arrangement, acquires no better title than what the assignor had, and is not entitled to a decree against B also. The assignee is not a holder in due course. 1938 Mad 599 (600, 601) [AIR V 25].

[8] Where in a suit based on a pronote executed in favour of a proprietor of a chit-fund and on his insolvency assigned to the plaintiff the assignee knew at the time he got the assignment that the insolvent was running the 'Fund' and the defendant was having dealings with the insolvent; and he also knew the circumstances under which the said pronote was executed. Held that he was not a holder in due course. 1958 Mys 126 (128) [AIR V 45 C 31] : ILR (1957) Mys 333.

[9] A was the general agent of B and had a power of attorney duly executed by B in his favour and full authority had been given to A to negotiate the sale of the property of B and to receive the consideration. The property was sold to C. Held that A was perfectly entitled to receive the consideration payable by C in respect of the property sold by B to him and the mere fact that A was ultimately accountable for the money to his principal would not amount to a defect in his title to recover

the money under the cheque drawn by C. 1955 NUC (All) 1699 [AIR V 42].

**5. Fraud.** — [1] Negotiable instrument obtained by fraud and endorsed to holder — No presumption of holder being holder in due course—Holder has to prove that he is holder for value and that he obtained instrument before it became payable and without having cause to suspect endorser's title. 1928 Mad 1238 (1241) [AIR V 15] (DB).

[2] Where the plaintiff establishes the fact that a negotiable instrument was obtained from its lawful owner by means of fraud, the onus of proving that a third party was a holder in due course lies on the defendant. (1909) 36 Cal 239 (250).

[3] The endorsee of an overdue bill or promissory note does not take it subject to claims arising out of collateral matters such as a set-off, and the endorsement of an overdue bill in order to defeat a prospective claim on a set-off would not amount to a fraud. The only circumstance in which the transferee of an overdue bill would be fixed with liability to allow a set-off in respect of a claim due from the transferor is the circumstance which would justify an inference of an agreement to set off by both parties of which the transferee has notice. 1942 Mad 30 (30, 31) [AIR V 29].

[4] A plaintiff cannot be said to be a holder in due course if it can be proved that to his knowledge there was a defect in the drafts which came into his possession and this can only be proved by evidence. 1952 Punj 298 (297) [AIR V 39] (DB).

[5] Where an incomplete instrument, such as a promissory note, in which the name of the payee is left blank is signed by A and delivered to B and subsequently A pays the amount due on the note to B and thereafter B in collusion with his brother C and with his full knowledge that the instrument had been discharged inserts the name of the latter in the blank there and completes the instrument. A will not be liable on the instrument to C who cannot be said to be a holder in due course. 1954 Mad 532 (534) [AIR V 41 C 198].

[6] Where one of the partners who had authority to endorse partnership cheques, indorses them but pays it in non-partnership account and is thus guilty of conversion and the bank collects the money in spite of its doubt and superficial inquiry the bank is not a holder in due course and the burden of proving that the value is given is on the bank. (1955) 1955-2 All E R 571 (582).

[7] Where fraud has, in fact been alleged in a case it cannot be said that the defendants have no defence whatsoever and that they should not be given an opportunity of establishing the allegation of fraud. 1952 Punj 298 (297) [AIR V 39] (DB).

**6. Forged endorsement.** — [1] A forged endorsement is a nullity and consequently there is no question of a subsequent holder being a holder in due course. 1928 Bom 436 (439) [AIR V 15] : 52 Bom 810 (DB) + (1909) 36 Cal 239 (250) + 1921 Sind 172 (174) [AIR V 8] : 15 Sind L R 93.



**10. "Payment in due course."**

"Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

**11. Inland instrument.**

A promissory note, bill of exchange or cheque drawn or made in \*[India], and made payable in, or drawn upon any person resident in, \*[India] shall be deemed to be an inland instrument.

[a] Substituted for "a State" by the Repealing and Amending Act, 1957 (XXXVI of 1957), S. 3 and Sch. II [17-9-1957].

**12. Foreign instrument.**

Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

**Section 9 — Note 6 (contd.)**

[2] A entrusting B with certain debentures of C company transferable by endorsement for collecting interest—B by forged endorsements in his own favour pledging them with D bank to secure his indebtedness—D bank surrendering debentures to C company in exchange of new debenture issued in their name. Original securities being cancelled and retained by C company—B transferring his loan account to M bank and D bank endorsing new instruments over to M bank—M bank held was holder in due course and, therefore, A had no right of action against it. 1932 P.C. 22 (24) [AIR V 19] : 58 Ind App 433 : 56 Bom 1 (24 Bom 65, *Overruled*) + 1928 Bom 407 (410) [AIR V 15] : 52 Bom 792 (DB).

[3] Plaintiff entrusting port trust debentures to defendant 1—Forging of instruments by him to defendant 2 for securing advances—Debentures renewed by defendant 2 for same amounts in his name—New debentures referring to fact of renewal—Subsequent loans by defendant 1 from defendant 5 to pay off defendant 2—Defendant 2 endorsing debentures in favour of defendant 5. Plaintiff cannot recover debentures from defendant 5. 1928 Bom 434 (435) [AIR V 15] : 52 Bom 807 (DB).

**Section 10 — Note 1**

[1] Bank issuing draft drawn on its branch for payment of certain sum to H and G and endorsed in blank by them—H appearing alone at branch and presenting draft for payment—Branch manager not knowing H but paying amount on identification of H by L and H guaranteeing G's signature—Branch manager not taking steps to see whether G's signature was genuine—Payment held not in due course. 1928 Lah 520 (522) [AIR V 15] (DB).

[2] Ordinarily a bank cannot stop payment of draft unless there is some doubt as to the identity of the person presenting it as being or properly representing the person in whose favour it is drawn. The purchaser of a draft is not entitled to ask the issuing bank to stop payment on grounds such as matters relating to consideration in respect of which the draft

has been issued at his instance for this would often put the bank in an impossible position. Where the bank made careful enquiries about the nature of endorsements and there could in fact be no doubt that the draft was properly presented on behalf of the person in whose favour it had been drawn, the bank cannot be said to have been negligent or to have had reasonable grounds for supposing that the person presenting the draft was not entitled to receive payment of the amount mentioned therein. The bank therefore would be discharged under Ss. 85A and 10. 1945 Lah 213 (214, 215) [AIR V 32] (DB).

[3] A payment made without good faith and in negligence is not a due payment within S. 10. 1954 Mad 1001 (1005) [AIR V 41 C 344].

[4] A had several accounts with bank B. The parties also had an agreement to extend overdraft to A. A requested for an overdraft but the bank expressed its inability to allow more than Rs. 70,000/-. Subsequently A drew a cheque for Rs. 258/- and sent it by post to the payee who did not receive it. It was altered into a cheque for Rs. 2,34,081/- by another person and its payment was collected through a bank. In suit by A against B for declaration that A was wrongly debited with the amount it was held that as the cheque on the face of it did not disclose any traces of alterations at the time it was presented for encashment the payment made by B bank was payment in due course and was according to the apparent tenor of the cheque. 1958 Cal 399 (403) [5] AIR V 47 C 122].

[5] Sections 10, 82 (c) and 85 (2) can only apply to a negotiable instrument, that is, to payment of an instrument which mentions an amount payable and which falls within the definition of a negotiable instrument. They cannot have any application to the case of a telegraphic transfer. (60) 1960-1 Mad L Jour 187 (193) (DB).

**Section 11 — Note 1**

[1] Bill drawn upon resident in British India is inland bill, wherever it may have been drawn, in or out of British India. 1930 Cal 692 (692) [AIR V 17] : 57 Cal 730.

**13. "Negotiable instrument."**

"(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

*Explanation (i).* — A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

*Explanation (ii).* — A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

*Explanation (iii).* — Where a promissory note, bill of exchange or cheque either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

"(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.]

[a] Substituted for the original sub-section by the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919), S. 3. [b] As to promissory note payable to bearer, see fourth note (a) under section 4. [c] Inserted by the Negotiable Instruments (Amendment) Act, 1914 (V of 1914), S. 2.

**SECTION 13 -- SYNOPSIS**

1. Section 13 (1).
2. Section 13 (1) (Explanation (i)).
3. Section 13 (1) (Explanation (ii)).
4. Section 13 (2).

1. Section 13 (1).—[1] For instrument to acquire negotiability it must be in form capable of being sued upon by holder of it pro tempore in his own name and it must be by custom of trade transferable like cash by delivery. 1938 Sind 24 (27) [AIR V 25] : 32 Sind L R 640 & 1919 Cal 546 (548) [AIR V 6] : 46 Cal 331.

[2] Whenever question arises as to whether or not document in oriental language is negotiable instrument, the point will have to be decided not by looking to definition of negotiable instrument, but independently of its provisions. Courts will find out how such instrument has been treated in the past and if it appears that according to usage or custom such instruments have been treated as negotiable instruments then they will be treated as such. 1936 All 396 (399) [AIR V 23] : 58 All 858 (DB).

[3] There must be no reasonable possibility of ambiguity in construction of negotiable instrument and its meaning should be instantly recognisable. 1936 Nag 252 (253) [AIR V 23].

[4] Where chithi or demand note does not mention payee, it is not negotiable instrument. 1929 Sind 164 (164) [AIR V 16].

[5] Hand-note is negotiable document, but if it is found as a fact that it was never negotiated that would alter the situation. Where defendant had delivered, stamped and signed paper to a person, question as to whether at time when payment was made by defendant under a receipt purported to have been executed by such person, hand-note had already been completed in favour of plaintiff who has

brought suit on hand-note, is question of fact. 1941 Pat 504 (505) [AIR V 28].

[6] Railways receipts are not negotiable instruments. They stand on same footing as bills of lading. 1935 Mad 936 (942) [AIR V 22] (DB).

See 1914 Bom 178 (178) [AIR V 1] : 38 Bom 659 (DB). (A railway receipt is a mercantile document of title. The endorsee of such receipt has sufficient interest in the goods covered by it to maintain an action against the railway company for damages in respect of goods represented by the receipt.)

[7] A "mate's receipt" is not a negotiable instrument. (14) 41 Cal 670 (675) (PC).

[8] "Palmch" is ordinarily a receipt and is not negotiable—Custom of its negotiability is neither reasonable nor certain and offends against public policy and law with regard to stamp. 1938 Sind 24 (27, 29) [AIR V 25] : 32 Sind L R 640.

[9] A deposit receipt given by a bank is not a negotiable instrument which passes either by delivery or by endorsement; but where the money mentioned in the receipt is immediately payable and the receipt is presented duly endorsed together with an order to pay to a given individual, the individual becomes the owner of the money upon payment by the banker of his promise to hold it at the disposal of the payee. 1914 Bom 286 (287) [AIR V 1] : 38 Bom 618 (DB).

[10] Promissory-note in question held held within purview of definition of negotiable instrument. 1923 Lah 388 (389) [AIR V 10].

[11] The mere description of an instrument as a promissory note will not make it a promissory note if it fails to satisfy the statutory requirements of Ss. 4 and 13. If a document in order to entitle a person to the money specified therein requires proof of succession it cannot be construed as a negotiable instrument. 1953 Cal 758 (761) [AIR V 40 C 284] : 11 LR (1955) 1 Cal 441.

**Section 13 — Note 1 (contd.)**

[12] Where the promissory note is payable to a particular person and does not contain any words prohibiting transfers or indicating that it shall not be transferable the note is a negotiable instrument payable to order. Such an instrument is negotiable by the holder by endorsement and delivery and the person negotiating the instrument must have the necessary intention to constitute the person in whose favour the endorsement is made as the holder thereof and the endorsement must have been made for that purpose. 1957 Nag 85 (69) [AIR V 44 C 21]; I.L.R. (1956) Nag 850 (DB).

[13] Cheque from which word "bearer" is struck out without substitution of word "order" is not negotiable under the Act. Custom of trade of Bombay market which regards such cheque as order cheque negotiable cannot be recognised by law. 1919 Bom 73 (73) [AIR V 6].

[14] A cheque is under the law a negotiable instrument. Its negotiability can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. The only effect of crossing a cheque is, as stated in section 126 of the Act, that the drawee bank must not pay it otherwise than to any banker if it is crossed generally, or to the particular banker if it is crossed specially. There is no other effect of the crossing. 1952 All 590 (594) [AIR V 39]; I.L.R. (1951) 2 All 674 (DB).

[15] Debentures transferable by endorsement are negotiable instruments. 1932 P.C. 22 (24) [AIR V 19]; 58 Ind App 433; 56 Bom L. 1 [AIR 1928 Bom 407, *affirmed*].

[Compare 1928 Bom 436 (440) [AIR V 15]; 52 Bom 810 (DB). (Debentures issued by Bombay Municipality are not negotiable instruments in absence of evidence of custom of the market.)]

[16] Government promissory notes are negotiable instruments under S. 13. (10) 12 Cal L. Join 470 (472, 473) (DB).

[17] Share certificates with blank transfer deeds enclosed by last registered owner are not negotiable instruments. 1919 Cal 518 (545) [AIR V 6]; 46 Cal 531.

[18] A bill of lading is negotiable, although it is not a negotiable instrument in the strict sense of the term. 1959 Cal 328 (334) [AIR V 46 C 90] (DB).

[19] A bill of lading is not a negotiable instrument. 1956 I.L.R. (1956) 2 Cal 600 (606).

[20] A draft is a bill of exchange and so becomes a negotiable instrument under S. 13. 1960 All 218 (219) [AIR V 47 C 53].

[21] A bank's draft is a bill of exchange and is such it is a negotiable instrument. 1956 Cal 615 (618) [S. AIR V 43 C 175] (DB).

[22] Where the draft is one drawn by one branch of a bank on another branch thereof, the draft is not a negotiable instrument. 1959 Bom 267 (268) [AIR V 46 C 81]; I.L.R. (1958) Bom 1386.

[23] A 'shah jog' hundi does not technically fall within the definition of a bill of exchange or a negotiable instrument. It is all the same a negotiable instrument and has all

the incidents of the same. 1960 Punt 157 (159) [AIR V 47 C 53] (DB).

[24] A shah jog hundi is not payable to a particular individual at all. It is payable to any member of a class. A shah jog hundi is not payable to bearer. It is not payable to order. It is payable to a "respectable holder according to the practice in connection with hundis." It is not therefore a 'negotiable instrument' within the meaning of S. 13 (1). 1947 Sind 140 (141) [AIR V 34 C 49]; I.L.R. (1946) Kar 355 (DB).

[25] A commercial letter of credit, not to speak of a confirmed and irrevocable letter of credit, is not negotiable, but the benefit of the credit is negotiable and the credit itself as distinguished from the benefit of it is assignable or transferable with the buyer's consent, although it may not be negotiable. 1959 Cal 328 (334, 335) [AIR V 46 C 90] (DB).

[26] The question as to what the word 'inral' meant held depended on the proof in each particular case of usage of that word by the Nattokottam Chetti firms and that the word 'order' as used in S. 13 could not be given the meaning attributable to the word 'inral'. 1957 S.C. 815 (828) [S. AIR V 44 C 121]; 1958 S.C.R. 214.

**2. Section 13 (1) (Explanation (i)). —**

1. Promissory note payable to specified person or order is negotiable instrument. 1920 Low Bur 42 (43) [AIR V 7]; 10 Low Bur Rel 96.

2. Promissory note executed in favour of a named payee is payable to his order and is a negotiable instrument. 1934 Bom 356 (358) [AIR V 21] (DB) + 1925 All 282 (292) [AIR V 12].

[But see 1914 L.J. 100 (101) [AIR V 1].]

3. Prenote not expressly payable to particular person or his order is a negotiable instrument if transferable. 1925 Sind 9 (10) [AIR V 12].

4. Debentures issued by Bombay Improvement Trust and transferable by endorsement are promissory notes and hence negotiable instruments. 1932 P.C. 22 (24) [AIR V 19]; 58 Ind App 433; 56 Bom L. 1 [AIR 1928 Bom 407, *affirmed*].

[Compare 1928 Bom 436 (440) [AIR V 15]; 52 Bom 810 (DB). (Debentures issued by Bombay Municipality are not negotiable instruments in absence of custom of market.)]

5. Shah jog hundi is not negotiable instrument. 1947 Sind 140 (141) [AIR V 34 C 49]; I.L.R. (1946) Kar 355 (DB) + 1943 Nag 99 (105) [AIR V 50]; I.L.R. (1943) Nag 149 (DB).

[But see 1920 L.J. 295 (297) [AIR V 7]; 1 L.J. 429 (DB). (Bill payable to shah or banker, similar to cheque crossed generally and payable only to or through some banker, is Shah Jog Hundi and is a negotiable instrument.) + 1925 Mad 44 (45) [AIR V 10] (DB).]

6. Hundi payable to payee or bearer. Endorsement by payee in favour of named person. Hundi ceases to be payable to bearer. 1925 Bom 175 (175) [AIR V 12] (DB).

7. An instrument ran as follows: "We draw hundi for Rs. 1,000 full double of 500 rupees the half thereof in favour of dhanijog. Please

## 14. Negotiation.

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

## 15. Indorsement.

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

### Section 13 — Note 2 (contd.)

pay after 60 days from 12, 1979 Samvat according to rules of Hundi—*Held* that instrument was payable to order and was therefore negotiable instrument within S. 13. 1930 Pat 239 (240) [AIR V 17] : 9 Pat 717 (DB).

[8] Explanation (i) introduced by Act 8 of 1919 to S. 13 cannot be read into the definition of a bond as contained in S. 2 (5) (b) of Stamp Act. 1927 Cal 472 (473) [AIR V 14] : 54 Cal 445 (DB) \* 1937 Nag 61 (62) [AIR V 24] : 1 L R (1937) Nag 510.

[9] Explanation 1 to S. 13 (1) cannot be read along with the definition of a bond as contained in S. 2 (4) of the Stamp Act so as to make the instrument a promissory note which in the face of it is not one payable to order by virtue of the said Explanation and thus to take it out of the said definition. 1959 Andh Pra 653 (655) [AIR V 46 C 189] (DB).

[10] The effect of Explanation (1) of S. 13 (1) introduced into the Act by the Negotiable Instruments (Amendment) Act, 1919 was to bring within the class of negotiable instruments, certain promissory notes not payable to order which previously were not negotiable. 1959 All 583 (584) [AIR V 46 C 162] (SB).

### 3. Section 13 (1) (Explanation (ii)) —

[1] Under explanation (ii) to S. 13, it is necessary that person to whom money is to be paid or that it is to be paid to bearer should be expressly stated before document can be taken to be promissory note payable to bearer. 1938 Nag 464 (464) [AIR V 25].

[2] "Dhanijog" hundis are negotiable instruments and payable to bearer. 1928 All 549 (550) [AIR V 15] (DB).

4. Section 13 (2). — [1] Act V of 1914 is not retrospective and pro-note executed prior to Act, payable in alternative, to one of several payees is not a promissory-note. 1921 Mad 122 (123) [AIR V 8] (DB).

[2] In case of pro-note made payable to two or more persons jointly, one of them cannot discharge the maker from liability so as to bar claim against maker by others. 1937 Rang 227 (230) [AIR V 24] : 1937 Rang L R 1 (FB).

### Section 14 — Note 1

[1] Rights and liabilities under promissory note cannot be transferred by mere book entries. Transfer of rights and liabilities under pro-note must be made by assignment or endorsement according to law. 1943 Sind 67 (72) [AIR V 30] : ILR (1942) Kar 516 (DB).

[2] In the negotiation of a bill of exchange the right created is in personam but it reserves

the right of stoppage of payment. The negotiability by assignment as such is different, but it is a kind of negotiability nevertheless. 1957 Nag 31 (41) [AIR V 44 C 13].

[3] Document is negotiable if by custom of money market, it is transferable like cash. Delivery order may or may not be negotiable; question depends upon conditions attached to it and usage of trade under which it is issued. 1918 Low Bur 122 (128) [AIR V 5] : 9 Low Bur Rul 143 (DB).

[4] By the usage of jute trade in Calcutta, delivery orders are issued only on cash payment; they pass from hand to hand by indorsement and are sold and dealt with in the market as absolutely representing the goods to which they relate. (11) 38 Cal 127 (138) (DB).

[5] The holder of a negotiable instrument who has indorsed it to a third party could maintain a suit, on the basis of it without its being re-indorsed to him, if it appears that the bill was dishonoured when presented on maturity by the indorsee and the holder pays back the amount to the indorsee and comes to the possession of the document, as the property in the note has revested in him. The absence of re-indorsement as per S. 15 or S. 16 of the Negotiable Instruments Act, is not fatal to the claim of the holder in a suit. 1958 Andh Pra 33 (34) [AIR V 45 C 9] : ILR (1957) Andh Pra 439. (17 Mad 197; 30 Mad 441 and 28 Mad 544, *Followed*.)

[6] There is nothing in law which makes it incumbent upon an assignee of a promissory note to issue notice to the promisor forthwith after the date of assignment. Nor can there be any rule of thumb to find out what is a reasonable time within which the assignee should have intimated to the maker the fact of the assignment. Where therefore the assignee issues such notice nearly a year after the assignment in his favour it cannot be said that there was any negligence on the part of the assignee. 1948 Mad 171 (171, 172) [AIR V 55 C 85].

### Section 15 — Note 1

[1] Where endorser gets another person to write his name for him, it is validly "signed" within S. 15. 1936 Rang 27 (28) [AIR V 23] (DB).

[2] Signature on back of instrument of a person, neither maker nor holder thereof, is not endorsement. 1925 Sind 9 (10) [AIR V 12].

[3] Mere written acknowledgment of receipt of money does not amount to indorsement within S. 15, nor to transfer of actionable

## 16. Indorsement "in blank" and "in full."

\*[(1)] If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full"; and the person so specified is called the "indorsee" of the instrument. "Indorsee."

\*[(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]

[a] *Inverted by the Negotiable Instruments (Amendment) Act, 1914 (V of 1914), S. 3.*

### Section 15 — Note 1 (contd.)

claim under S. 130 of the T. P. Act, 1921 Mad 122 (122, 123) [AIR V 8] (DB).

[4] Promissory note executed in favour of person as agent of certain firm—Proprietor of that firm can endorse promissory note under S. 15, 1934 Rang 289 (291) [AIR V 21].

[5] A borrowing Rs. 100/- from D branch of N bank—Documents executed in favour of managing agents of Bank—Bank endorsing promissory note in favour of P who was one of its creditors—P suing on promissory note impleading Bank and A as defendants—P is entitled to sue on promissory note—Bank is real holder of promissory note and not the managing agents, 1939 Cal 256 (257) [AIR V 26].

[6] The holder of a negotiable instrument who has endorsed it to a third party can maintain a suit on the basis of it without its being re-indorsed to him if it appears that the bill was dishonoured when presented on maturity by the indorsee and the holder pays back the amount to the indorsee and comes into possession of the instrument, 1958 Andh-Pra 33 (35) [AIR V 45 C 9]; ILR (1957) Andh Pra 439.

[7] It is not necessary that the signature in order to be binding should be at the foot of an endorsement. It may be in the beginning or middle of it. The question always is, whether the party, not having signed it regularly at the foot, yet meant to be bound by it as it stood, or whether it was left so unsigned because he refused to complete it; in other words, whether the insertion of the name in any part of the writing was for the purpose of authenticating the instrument. What matters is the substance and not the outward form of the wording, and so long as the debtor's name has been affixed on the document in question in such a way, as to make it appear that the document is his and that he is the real author of it, it does not matter what the form of signature is nor is it necessary that the signature must appear in any particular part of the document, and it may appear in any part provided that the intention of the party is to acknowledge the instrument to be his, 1956 Raj 129 (132) [AIR V 43 C 40]; ILR (1956) 6 Raj 612 (DB). (AIR V 1923 Cal 35 and AIR 1941 Oudh 376, *Rel. on*.)

[8] Negotiable instrument may be transferred otherwise than by endorsement. It may be otherwise assigned and assignee may sue in his own name, only difference being that assignee will have only interest of assignor, while indorsee will have all rights of holder in due course. Assignment may be oral, 1919

Lah 85 (86) [AIR V 6]; 1919 Pun Re No. 29 (DB).

[See also 1933 Mad 133 (133) [AIR V 20] (DB).]

### Section 16 — Note 1

[1] An assignment of instrument can be effected either by the endorsement or by other forms known to law. If it is by way of endorsement it should be in terms of S. 16, 1958 Andh-Pra 33 (34) [AIR V 45 C 9]; ILR (1957) Andh Pra 439.

[2] For an indorsement to bind the payee or the holder of a promissory note, it must be made either by the payee or the holder himself or by a duly authorised agent acting in his name under S. 27, 1952 All 245 (246) [AIR V 59]; ILR (1952) 2 All 178 (FB). (Endorsement by counsel having no authority in that behalf.)

[3] Under S. 16 if the endorser signs his name only, the endorsement is said to be in blank and such endorsement makes the negotiable instrument payable to bearer. The endorsement must however be a genuine and valid endorsement, 1938 Lah 520 (522) [AIR V 25] (DB).

[4] Section 16 does not lay down any specific form or words which are necessary for endorsement. The endorsement need not bear the words "that the endorsee will be entitled to realise the amount by suit, 1935 Oudh 264 (264) [AIR V 22]; 10 Luck 732 + (10) 33 Mad 34 (35, 36) (DB). (Promissory note contained following indorsement by assignor, "I have this day received in cash from you Rs. .... and assigned to you this note with power to recover amount due under it by showing same"—Suit by assignee on note—*Held*, indorsement was indorsement in full within S. 16, that plaintiff thereby became holder in due course and that suit was maintainable, in absence of evidence that payment was over-due before endorsement. Presumption was that assignment took place before pro-note became payable.)

[5] In order to constitute an endorsement within the meaning of S. 16 there must be a direction to pay the amount of the instrument to a specified person. The form of the assignment is immaterial, provided the intention to transfer is clear. But that intention must be gathered from the words used in the instrument assigned and not from evidence *abundante*, 1938 Mad 417 (419) [AIR V 23].

[6] Under S. 16 the endorsement need not contain actual words of direction. It is sufficient if it contains what is equivalent to a direction. An endorsement that the note had

**17. Ambiguous instruments.**

Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

**18. Where amount is stated differently in figures and words.**

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

**19. Instruments payable on demand.**

A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

**Section 16 — Note 1 (contd.)**

been made over to so and so on a particular date over the signature of the payee with the delivery of the note to the endorsee is an endorsement in full. (113) 19 Ind Cas 410 (410, 411) (Mad).

[7] Where the words "made over" or the word "assign" are used the intention of the parties has to be looked into and that is whether the parties wanted to have an endorsement of the promissory note and not an assignment. If an endorsement contains words equivalent to a direction to pay, though there may not be the actual words connoting the direction, it would amount to a direction to pay and would be 'an endorsement' within the meaning of S. 16 of the Negotiable Instruments Act. 1935 Mad 53 (55, 56) [(S) AIR V 42 C 12] (DB). (Promissory note endorsed in English 'contents received with interest upto date. Please pay to Shri M. Sd. SV' and below it was written in Malayalam "As written above the promissory note has been assigned to Shri M. without recourse—Signed "SV" using the word 'theera'—Held that endorsement was in full and did not require stamp under S. 2 (10), Stamp Act.)

[8] Acknowledgment of payment signed by one of alternative payees is neither endorsement in full, nor, endorsement in blank and it cannot be treated as effecting assignment of actionable claims under S. 130, Transfer of Property Act, because there are absolutely no words of transfer. 1921 Mad 122 (122, 123) [AIR V 8] (DB).

[9] An endorsement of a pro-note, while it transfers the property in the note to the endorsee as the new holder, does not operate as an assignment to the endorsee of the debt due by the maker to the original payee. 1934 Mad 350 (352) [AIR V 21].

[10] Section 16 (2) gives protection to the drawee and to the indorsee also if the signature of the indorsee is not genuine. 1926 Bom 262 (264) [AIR V 13] : 50 Bom 118.

**Section 17 — Note 1**

[1] Where a Hundi is ambiguous about its being either a pro-note or bill of exchange the holder is entitled to treat it as either. 1930 Cal 697 (698) [AIR V 17] : 57 Cal 695 (DB).

[2] The right of election given to a holder by S. 17, Negotiable Instruments Act, is not taken away by the Stamp Act; under S. 17 where an instrument can be construed as a

pronote or Hundi the holder may at his election treat it as either, and if it is treated as a hundi it has to be so treated not only for purposes of the Negotiable Instruments Act but also for purposes of Stamp Act; it would be reasonable to read S. 17, Negotiable Instruments Act as a proviso to S. 6, Stamp Act. 1932 Mad 765 (766) [AIR V 19].

[3] Hundi is sometimes a pro-note and sometimes a bill of exchange. 1919 Nag 42 (40) [AIR V 6] : 17 Nag L R 113 (DB).

[4] Hundi drawn by firm A on its branch B to pay certain sum of money within prescribed number of days—At B hundi indorsed to X who paid full value—Hundi held was promissory note and not ambiguous document within S. 17—Both drawer and indorser held liable jointly and severally. 1919 Nag 42 (41, 42) [AIR V 6] : 17 Nag L R 113 (DB).

**Section 18 — Note 1**

[1] When a difference arises between the sum expressed in words in the body of the instrument (pronote) and that mentioned in figures on the top in one corner, the amount mentioned in words will be taken to be the sum for which the instrument was made payable. The mandatory nature of S. 18 gives no choice to the Courts to give preference to the sum mentioned in figures over the amount mentioned in words. 1954 J & K 56 (56) [AIR V 41 C 39] (FB).

**Section 19 — Note 1**

[1] A bill of exchange is payable on demand though the demand cannot be made on the day when the bill is drawn. A note which does not fix any date for payment is payable on demand. 1918 Mad 317 (318) [AIR V 5] (DB).

[2] Promissory-note payable on demand is present debt and is payable without demand and limitation begins to run from date of it. Stipulation for compensation in shape of interest makes no difference. 1940 Cal 401 (402) [AIR V 27] : ILR (1940) 2 Cal 362.

[But see 1940 Mad 631 (632) [AIR V 27] : ILR (1940) Mad 382 (DB).]

[3] The absence of the words "on demand" in a promissory note does not affect the application of Art. 105 of the Travancore Limitation Act, as a promissory note in which no time for payment is specified is one payable on demand under S. 18 of the Negotiable

**20. Inchoate stamped instruments.**

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount : provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

[a. Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule 1-4-1951.]

**Section 19 — Note 1 (contd.)**

Instruments Act, 1955 Trav.-Co 141 (142) AIR V 42 C 51 : H.R. (1954) Trav.-Co 1196 (DB).

**Section 20 — Note 1**

1. Pro-note is valid though amount is not mentioned in body of document. If amount can be ascertained from face of paper, form of expression is immaterial. 1923 Rang 97 (97) AIR V 10 : 11 Low Bur Rul 439.

2. The right given to complete the document is given to the holder and the holder contemplated in S. 20 is not the holder as defined in the Act but holder in the literal sense of the words, namely, the person who actually holds the document. 1955 Bom 290 (291) AIR V 40 C 91 : 11 R. 1955 Bom 717 (DB).

3. Though payee can fill in blank inchoate instrument and sue on it or endorse it to someone else, no decree can be passed on such blank instrument if it does not contain name of payee. Such instrument is not negotiable. 1120 17 Ind Cas 915 915 (Low Bur).

4. Section 20 of the Negotiable Instruments Act gives general authority to a person to whom a stamped and signed paper is delivered to convert it into a negotiable instrument payable to any specified person; it is open to a person who receives a blank inchoate instrument to complete it in favour of any person besides himself. A hand-note is a negotiable instrument, but if it is found as a fact that it was never negotiated, that would alter the position. 1941 Pat 504 504 (AIR V 28).

5. Where promissory-note promises to pay sum unconditionally to certain person there is nothing in S. 4 which curtails general authority conferred by S. 20 on person to whom stamped and signed paper is delivered to convert it into negotiable instrument payable to specified person. 1940 Pat 377 (378) AIR V 27 : 19 Pat 404 (DB).

6. Under S. 20, it is open to payee whose name is not mentioned to fill in blank instrument, but unless he does so, he is not entitled to obtain any decree. 1932 Pat 324 (325) (AIR V 19).

7. A person who gives another possession of his signature on a hundi *prima facie* authorises the latter as his agent to fill it up and give to the world the bill as accepted by him. He enables his agent to represent himself to the world as acting with a general authority,

and cannot say to a bona fide holder for value, who has no notice of secret stipulations, that there were secret stipulations between himself and the agent. 1921 Nag 113 (115) AIR V 8.

8. Where an incomplete instrument such as a promissory-note in which the name of the payee is left blank is signed by A and delivered to B, and subsequently, A pays the amount due on the note to B and thereafter B, in collusion with his brother C, and with his full knowledge that the instrument has been discharged, inserts the name of the latter in the blank space and completes the instrument, A will not be liable on the instrument to C who cannot be said to be a holder in due course. The authority of B as agent of A to complete the instrument comes to an end when the amount of the note is paid to him and the subsequent insertion of C's name as payee is without authority and, therefore, no claim can be founded on the instrument by C. 1954 Mad 532 (534) AIR V 41 C 198.

9. Suit by payee on hand note without endorsement. Opposite party cannot plead that payee is benamidar. 1939 Pat 347 (348) (AIR V 26).

10. Document whose stamp has not been crossed by signature, might still come under S. 20, if stamp had been cancelled in accordance with S. 12 of Stamp Act. 1916 All 197 (199) (AIR V 3 : 38 All 430 : 17 Cr L Jour 205).

11. Section 20, will not entitle holder of promissory-note to write above signatures on reverse of promissory-note statement of payment of interest. Section only refers to person signing and delivering to another paper stamped in accordance with law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon incomplete negotiable instrument. 1934 Rang 287 (288) (AIR V 21).

12. Estoppel under S. 20 can only be applied to papers which signature covers. Delivery of hundi paper signed but left blank cannot be taken to give *prima facie* authority to make thereon negotiable instrument outside maximum value covered by stamp by attaching other unsigned stamps. Delivery of several signed stamps separately does not give *prima facie* authority to stick them together for single instrument. It is only when signature is across two or more stamp papers past-



**21. "At sight." "On presentment." "After sight."**

In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

**22. "Maturity."**

The maturity of a promissory note or bill of exchange is the date at which it falls due.

**Days of grace.**

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

**Section 20 — Note 1 (contd.)**

ed together showing that several stamps have been united with sanction of person making signature, that S. 20 will govern as one transaction instrument engrossed upon joined papers. 1920 Nag 45 (47) [AIR V 7].

[13] Section 20 relates to documents "stamped in accordance with law." Cheque does not require any stamp under law and so section does not apply to cheques. Where, blank cheque drawn by person is dishonoured by Bank, 'holder in due course' of such cheque cannot hold drawer liable for amount stated in it, as cheque is not inchoate stamped instrument. 1937 Lah 816 (818) [AIR V 24].

[14] Person obtaining from maker a signed but inchoate document for consideration — Document properly stamped — Under prima facie authority conferred upon him under S. 20, such person completing the document by making himself payee—He does not thereby become a holder in due course within meaning of S. 9. 1953 Bom 290 (291) [AIR V 40 C 91] : ILR (1953) Bom 717 (DB).;

[15] Suit on pro-note—Executant admitting signature but asserting that he did not sign note in the condition in which it is filed—Burden of proof that pro-note is not what it appears to be is on executant. 1939 Rang 334 (335) [AIR V 26] : 1939 Rang L R 397 (FB).

[16] Two cheques in dispute were filled in by N, an official of the bank. The cheques were drawn in favour of two clerks of the first defendant and purported to be signed by them on the back of the cheques. But the first defendant denied the genuineness of the signatures and there was no evidence to the contrary. The trial Judge came to the conclusion that N forged these two cheques filling them up himself and passing them for payment himself. He further found that he misappropriated those amounts—*Held*, that in no sense could N be deemed to be the holder of the two cheques. 1959 Mad 119 (122) [AIR V 46 C 39] (DB).

[17] Section 20 must be strictly construed. It imposes a serious liability upon a person who allows an incomplete document to go out in the world. Liability under the section when person who allows an incomplete document to go out, heavy as it is, should not be increased by importing words in the section

which are not there. 1953 Bom 290 (292) [AIR V 40 C 91] : ILR (1953) Bom 717 (DB).

**Section 22 — Note 1**

[1] This section makes it clear, that a promissory-note or bill of exchange can be said to be at maturity only when it specified a date on which the amount is payable. Therefore the term 'maturity' can have no application to a promissory-note payable on demand. 1931 Mad 113 (114) [AIR V 18].

[2] In the case of a promissory-note payable on demand the note does not become payable until demand is made. On demand being made it falls due immediately. 1940 Mad 631 (632) [AIR V 27] : I L R (1940) Mad 382 (DB). ((1890) 24 Q B D 13, *loc. cit.*) + 1928 Mad 1238 (1241, 1242) [AIR V 15] (DB). (Instrument cannot be overdue until there is demand.)

[3] Where a promissory-note payable on demand is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title, of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since the issue. 1935 Rang 156 (157) [AIR V 22].

[4] Provision in S. 22 (2) giving three days grace affects only instruments which are not written in an oriental language — Instrument written in oriental language is governed by local usage — Hundi falling due on certain date according to local usage — Three days of grace cannot be added. 1940 Lah 14 (14) [AIR V 27].

[5] It is open to parties to enter into contract that the provisions of S. 22, relating to days of grace shall not apply to them and it is not open to the promisee to insist that the maker of the note should be compelled to take advantage of the days of grace. 1914 Mad 430 (432) [AIR V 1] (DB). (Per *Seshagiri Iyer J.*; *Sadasiva Iyer J.*, Contra.)

[6] Hundi payable on 28th January falls due on 31st of that month under S. 22 (2). 1915 Lah 297 (297) [AIR V 2].

[7] Where hundi is drawn on 7th May and is payable 61 days after that date, presentment of it for payment on July 10th would be correct. Such hundi need not be presented at once to payee or endorsee for acceptance. 1917 All 114 (115) [AIR V 4] : 39 All 86 (DB).



## 23. Calculating maturity of bill or note payable so many months after date or sight.

In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

### Illustrations

(a) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(b) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(c) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

## 24. Calculating maturity of bill or note payable so many days after date or sight.

In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

## 25. When day of maturity is a holiday.

When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

*Explanation.*—The expression “public holiday” includes Sundays : <sup>a</sup>[\* \* \*] and any other day declared by the <sup>A</sup>[Central Government], by notification in the Official Gazette, to be a public holiday.<sup>b</sup>

[a] The words “New Year’s day, Christmas day : if either of such days falls on a Sunday, the next following Monday ; Good-Friday :” were omitted by the Negotiable Instruments (Amendment) Act, 1955 (XXXVII of 1955), S. 3 [w. e. f. 1-4-1956]. [b] The Central Government has directed that subject to its control the function vested in it by the Explanation to S. 25, to declare public holidays shall be performed by the Chief Commissioner of the State of Pondicherry in respect of that State—see S. R. O. 66, dated 31-15-1955, Gaz. of Ind., 1956, Pt. II-S. 3, page 22.

### Section 25 — Note 1

[1] A notification under S. 25 does not by its own force operate to declare a day as a close holiday under the Bengal, Agra and Assam Civil Courts Act. Normally when a day is declared to be a holiday under S. 25, the High Court also falls in line with such a notification and takes steps to have the day in question declared a holiday also for the civil Courts subordinate to it by issuing a notification under S. 15 (2) of the Bengal, Agra and Assam Civil Courts Act. 1959 All 505 (508) [AIR V 46 C 130] (DB).

[2] Where 2-10-1947 was declared to be a holiday under S. 25, but it was not notified as such in the Official Gazette under S. 15 (2) of the Civil Courts Act and the Court passed an order on that date that the case should be disposed of ex parte, recorded evidence and pronounced judgment — Held that the spirit of S. 15 demanded that the day should have been treated as a close holiday by the subordinate Courts and as there was no urgent necessity to proceed, the judgment and decree had to be set aside. 1959 All 505 (508) [AIR V 46 C 130] (DB).

## CHAPTER III

## PARTIES TO NOTES, BILLS AND CHEQUES

**26. Capacity to make, etc., promissory notes, etc.**

Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

**Minor.**

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

## SECTION 26 — SYNOPSIS

1. **Scope.**
2. **Minor.**
3. **Bankrupts.**
4. **Corporations.**
5. **Capacity of persons of unsound mind to contract** — See Ss. 11 and 12, Contract Act.

1. **Scope.**—[1] Section 26 says that every person capable of contracting may bind himself by making a promissory note. Therefore capacity to incur liability as maker of the note depends upon his capacity to contract under the general law. (29) 117 Ind Cas 133 (134) (DB) (Mad).

[2] The specific provision contained in S. 120 of the Act is clearly subject to the general rule enacted in S. 26 of the Act. If the party does not possess legal capacity to enter into a contract, Section 26 makes it clear that such person cannot render himself liable by executing a promissory note. (29) 117 Ind Cas 133 (134) (DB) (Mad).

[3] Where person is to be bound, his name must appear upon it as person to be bound thereby. 1925 Cal 1153 (1155) [AIR V 12].

(See also notes under Ss. 27 and 28.)

[See also 1925 Cal 1062 (1064) [AIR V 12] : 52 Cal 802 (DB).] (A Hundi drawn in favour of a firm M & Sons was endorsed twice by them "M & Sons" and "M & Sons" Managing Agents L. A. & Co. — Held that the words Managing Agents L. A. & Co., were merely descriptive or decorative and that it did not bind L. A. & Co. Followed in A I R 1930 All 778.)

[4] Evidence will not be permitted to be given by a person who had signed a negotiable instrument apparently as the person liable thereon to prove that in fact he signed the note as an agent for an undisclosed principal. 1928 Bom 516 (520) [AIR V 15] : 52 Bom 640 (DB).

[5] The principle that the name of a person or firm to be charged on a negotiable instrument should be clearly stated on the face or back of the instrument has no application to the case of a joint family which it is sought to make liable, through the signature of the managing member thereof. 1922 All 116 (116) [A I R V 9] : 44 All 393 (DB). (23 Mad 597;

20 Bom 488 and 11 Cal W N 139. Followed. (207) 11 Cal W N 139 (141) (DB). (Sections 26, 27 and 287 of this Act refer to cases of ordinary agency.)

[6] The incapacity of one or other parties to a bill does not in any way affect the liability of other parties. See Ss. 120 to 122 of the Act.

[7] For the liability of the maker or the drawer in the case of foreign notes, bills and cheques see S. 134.

[8] Hindu joint family — Junior member executing hand note for legal necessity under instrument — Suit on against entire family — Sections 26 and 27 held not applicable as no question of agency arose. 1957 Orissa 212 (214) [AIR V 44 C 58] : 1 L R (1957) Cut 561.

[9] The question whether want of execution by one can absolve the other who has executed the document is to be determined by ascertaining the intention of parties. If the understanding was that either both A and B or neither of the two should be liable, and execution of the promote by B was a condition precedent to the obligation for payment by A, it is a matter for proof. If the transaction was not intended to be effective unless A was an executant, the creditor would not fail to protest against A taking away the money or would at least attempt to obtain the signature of B who was present at the time. The fact that this was not done and it was considered sufficient to strike off the recital about B being a party to the instrument shows that B's execution though desired was not deemed vital for the purpose of the transaction. 1954 Mys 185 (186) [AIR V 41 C 80] : 1 L R (1955) Mys 221 (DB).

[10] See also Ss. 27 and 28.

2. **Minor.**—*Minor as acceptor*—[1] A promissory note executed by a person attaining majority in settlement of a note executed by him while a minor in consideration of his having received from the obligee a certain sum of money when he was a minor is bad for want of consideration. (206) 16 Mad L. Jour 422 (426) (DB).

[But see (207) 11 Cal W N 135 (138). (S. an infant in the course of his business dealings with A incurred debts—On attaining majority he executed a bond by which he agreed to pay the debts which he incurred during minority—

## 27. Agency.

Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

### Section 26 — Note 2 (*contd.*)

*Held* that S was liable for the whole amount secured by the bond.]

#### Minor as payee.

[2] Minor can draw bill or issue cheque on banker and can be payee. 1917 Mad 630 (640) [AIR V 4] : 40 Mad 308 (FB).

[3] The question whether the minor is intended to be the real payee has to be decided upon the proper construction of the document. 1929 Mad 284 (284) [AIR V 16] (DB).

[4] A minor plaintiff can sue upon a Shah Jog Hundi of which he is the bearer. 1925 Bom 527 (528) [AIR V 12] (DB).

[5] A promissory-note payable on demand executed in favour of a minor can be sued upon when the minor does not subject himself to any obligation. (13) 24 Mad L Jour 363 (364) (DB).

#### Minor as endorser.

[6] A minor cannot bind himself or incur liability by an endorsement to the cheque. 1857 All 490 (497) (FB).

#### Joint and several liability of minors.

[7] In the case of joint promissory-notes, the minority of one of joint promisors and his consequent immunity from liability cannot be pleaded as a bar to the promisee's claim against the other joint promisor. 1916 P C 2 (AIR V 3) : 43 Ind App 99 : 39 Mad 409.

[8] A minor's bond is void, but a surety's liability does not cease by reason of this. 19519 Bom 697 (702) (DB). (*Followed* in 33 Cal 713).

[9] A and B of whom B was a minor, took loan from C and B the minor executed the promissory note in his name in lieu of the debt. *Held* that the promissory note having been executed by a minor was void and created no liability either on A or B. (39) 1 Ind C is 406 (407) (All).

[10] *Liability of minors on pro notes executed by guardians for necessities supplied* — Pro-note by a guardian — Money borrowed by the Guardian for necessities of the minor — *Held*, minor cannot be made personally responsible on the note nor could the guardian contract with the plaintiff so as to bind the minor's estate. *Held*, also that the plaintiff may proceed against the minors to recover moneys which they might be liable to pay as the debt incurred by guardian, for necessary purposes in another suit properly framed. 1923 Bom 304 (305) [AIR V 10] (DB).

#### Suit by a minor.

[11] When a promissory-note is executed in favour of a minor's adoptive mother a minor cannot sue alleging that the note was made and delivered on account of his estate. The principle is that a benamidar or trustee who takes a note in his own name is the person entitled in his own name to the possession thereof and not the *cestui que trust* or person for whom he holds the note. He is therefore the

proper person to sue upon it. (105) 28 Mad 205 (208) (DB). (*Followed* in 30 Mad 89 (FB) which *Overruled* 21 Mad 391).

[12] *See also* S. 11, Contract Act.

**3. Bankrupts.** — [1] Until the official assignee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bona fide* and for value in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the assignee. 1919 Bom 115 (118) [AIR V 6] : 43 Bom 890 (DB).

[2] The right of the undischarged insolvent to sue in respect of property acquired after adjudication and before the intervention of the official receiver appears to be for the protection of third parties dealing with him *bona fide* and for value. 1918 Mad 294 (295) [AIR V 5] (DB).

[3] A suit by a bankrupt who has not obtained a final discharge with reference to a Bill of exchange which had been endorsed to him is sustainable if the official assignee has not intervened. (107) 50 Mad 145 (150) (DB).

**4. Corporations.** — [1] It is a rule of common law that, with certain exceptions, a corporation is bound by those contracts only which are made under the corporate seal. The exceptions are (a) where the contract is executed, (b) in small matters of very frequent occurrence and (c) where it is impossible to affix the seal, as in cases of great urgency. 1927 Cal 465 (469) [AIR V 14] : 54 Cal 189 (DB).

[2] The District Board is a corporation and is empowered under the Madras Local Boards Act to make endorse and accept Negotiable Instruments. 1920 Mad 1011 (1012) [AIR V 7] : 43 Mad 816 (DB).

[3] Where among other things the execution of promotes is mentioned in the object clause of the memorandum of Association, and the Articles of Association gave to the Managing Agents power to make contracts and sign receipts and not to execute promissory notes — *Held* that the managing agent was not the authorised agent for the purpose of making promissory notes on behalf of the company. 1930 All 778 (778) [AIR V 17] : 52 All 883 (DB).

[4] *See also* S. 65, Contract Act.

**5. Capacity of persons of unsound mind to contract** — *See* Ss. 11 and 12, Contract Act.

## SECTION 27 — SYNOPSIS

1. Agent signing principal's name.
2. Negotiable instruments by agents — Liability of principal.
3. Liability of undisclosed principal.
4. Agent exceeding authority.
5. Negotiable instruments by manager or other members of joint Hindu family.
6. Negotiable instruments by partner of firm.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

### Section 27 — Synopsis (*contd.*)

7. Negotiable instrument by guardians: See under section 28.

8. Negotiable instruments by executor.

9. Negotiable instruments by trustees.

10. Negotiable instruments in favour of agent.

11. Negotiable instruments by Director of Company.

12. Negotiable instrument by husband.

#### 1. Agent signing principal's name.—

[1] A promissory note with words "Nishi, mark of C" but containing no separate mark, is valid where it is proved that the words written were with C's authority. 1918 Mad 24 (25) [AIR V 5]; 40 Mad 1171 (DB)\* 1931 Rang 131 (135) [AIR V 18]; 9 Rang 92. (A man may sign a promissory note by getting some one to write his name for him.)

#### 2. Negotiable instruments by agents—

**Liability of principal.** — [1] Where person is to be bound by negotiable instrument made on his behalf by his agent, his name must appear upon it as person to be bound thereby. 1925 Cal 1153 (1155) [AIR V 12].

[See also 1920 Cal 911 (911) [AIR V 7] (DB). (Promissory note)—Where there is nothing to indicate that the instrument was signed by promisor as agent or that he did not intend thereby to incur personal responsibility nobody except the promisor can be sued on the note.)]

[2] The name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand. It is not sufficient that the principal's name should be 'in some way' disclosed: It must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the instrument. 1932 Rang 97 (98) [AIR V 19]; 10 Rang 257 (DB). (Where a promissory note was signed by a person who alleged himself to be the agent of a firm but he signed it in his own name and there was no promise in it of the firm to re-pay the loan — *Held*, that the firm was not liable on the promissory note.)

[3] Promissory note, signed "N agent and attorney to M"—Words held only description of N's position and there was no signature in form necessary for an agent signing on principal's behalf—Agent should state that he signs note for and on behalf of person for whom he is acting. 1933 Cal 660 (661) [AIR V 20]. (AIR 1918 P C 146, *Rel. on.*) \* 1916 Mad 293 (295) [AIR V 3]; 38 Mad 482 (FB). (Maker of promissory note describing himself in the body of the note as an agent, but his promise to pay was unqualified by any reference to

his alleged principal and the note was also signed without any addition to the signature—Principal not liable.) \* (13) 14 Mad L Tim 502 (504) (DB).

[See 1915 Mad 1131 (1132) [AIR V 2]. (Executant of promissory note describing himself as agent in body and in signature portion—Agent is not personally liable.)]

[4] Promissory note—Agent of Nattukkotai Chetty firm—Vilasam of firm prefixed to signature—Principal debited with amount in body of note—Agent held not personally liable. 1919 Mad 183 (183) [AIR V 6] (DB).

[5] Hundi signed as Munim of firm—Money lent to munim not in his personal capacity but to firm—Munim held not personally liable. 1923 All 407 (407) [AIR V 10] (DB). (Section 28 did not apply.)

[6] "Agent" in Ss. 27 and 28 means agent of person capable of contracting within meaning of S. 26, and when agent is not liable principal is. 1919 Mad 616 (617) [AIR V 6]; 41 Mad 815 (DB).

[7] See also section 28.

[8] As to general principles of the law of agency, see Chapter X (Ss. 182 to 238) of the Contract Act IX of 1872.

#### 3. Liability of undisclosed principal.—

[1] In an action on a bill of exchange or a promissory note against a person whose name properly appears as party to the instrument, it is not open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal. 1918 P C 146 (147) [AIR V 5]; 46 Ind App 55; 46 Cal 663+1953 Orissa 179 (Pr 12) [AIR V 40 C 60]; 1 L R (1953) Cut 221 (DB)\* 1937 Oudh 65 (67) [AIR V 24]; 12 Luck 472 (DB)\* 1934 Mad 327 (329) [AIR V 21]; 57 Mad 892 (DB)\* 1930 Bom 424 (428) [AIR V 17]+1929 Nag 274 (275) [AIR V 16]; 25 Nag L R 173+ 1928 Bom 516 (518) [AIR V 15]; 52 Bom 640 (DB). (A hundi was in the following terms: "Fifty-six days after date I promise to pay Seth Chimmudas Fatechand or order the sum of Rs. 600 only for value received in cash. G. V. Athale, Managing Proprietor, Gangadhar & B. Friends—Sandhurst Road, Bombay No. 4"—*Held*, that the person liable on the hundi was Athale and not any alleged firm passing under the name of Gangadhar & B. Friends.)

[2] When deciding whether the maker of a promissory note has executed it as the agent or the representative of another, the Court cannot look into the surrounding circumstances. It cannot look beyond what is stated in the instrument. In India, where a person executing an instrument in an Indian language after giving his own description, adds that he is the agent of another, it means that he is acting as the other's agent in the matter of the execution of the document, and it is sufficient to exclude his personal responsibility. 1941 Mad 417 (421, 426) [AIR V 28]; 1 L R

**Section 27 — Note 3 (contd.)**

(1941) Mad 513 (FB). (AIR 1935 Mad 447 (FB), *Overruled*.)

[3] When on a fair interpretation of the negotiable instrument the name of the person liable is disclosed, and it is quite clear on the evidence that the agent endorsed it under the implied direction and with the explicit knowledge of his principal, an objection taken by the endorsee that the signature of the endorser does not appear on the face of the instrument as it was signed by the agent without mentioning that he is acting on behalf of his principal, cannot be upheld. It is only when there was some doubt regarding the identity of the drawer that the matter can be agitated before the Court. 1939 Lah 225 (233) [AIR V 26] (DB) + 1959 Bom 90 (Pr 8) [AIR V 46 C 34] : I L R (1959) Bom 458.

[4] It is of the essence of a claim based upon a negotiable instrument that the person executing that document should disclose, on the face of document itself, that he is not personally liable and that he is executing a promissory note for someone else. It is not sufficient that the principal's name should be 'in some way' disclosed; it must be disclosed in such a way that, on any fair interpretation of the instrument his name is the real name of the person liable upon the bill. 1953 Orissa 179 (Pr 11) [AIR V 40 C 60] : I L R (1953) Cut 221 (DB).

Ss. 1946 Lah 387 (391) [AIR V 33 C 71] (DB). (An agent, who is authorised to draw a hundi in the name of his principal and to sign his name, is not required to indicate on the face of the hundi that he is drawing it as an agent or with the authority of the principal. In not doing so, therefore, the agent is not guilty of any *ma'a fides*.)

[5] Where in a suit based on a promissory note, the authority of borrower to execute the document is questioned, that authority must be established before the instrument executed by him is looked at. 1959 Bom 90 (Pr 3) [AIR V 46 C 34] : I L R (1959) Bom 458.

[6] Promissory note by agent — Principal's name undisclosed in the instrument — Suit against both principal and agent based not on pro-note but on original consideration is maintainable. 1937 Oudh 65 (67) [AIR V 24] : 12 Luck 472 (DB).

**4. Agent exceeding authority.**—[1] When an agent executes a pro-note for which he is not authorised, a principal is not liable and when the agent does not disclose the name of his principal there can be no claim against the principal. 1932 Nag 27 (28) [AIR V 19] : 27 Nag L R 324.

[2] Where principal is not carrying on any business which may involve executing, accepting or endorsing of bills of exchange, agent has no authority to execute promissory notes on behalf of his principal either expressly or impliedly. 1938 Lah 41 (42, 43) [AIR V 25] (DB).

[3] On a plain reading of Ss. 27 and 28 it is clear that a general authority to transact business and to discharge debts does not confer upon an agent the power of endorsing bills of

exchange so as to bind his principal. Nor can an agent escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability. 1953 Orissa 179 (Pr 11) [AIR V 40 C 60] : I L R (1953) Cut 221 (DB).

[4] An express power of attorney to discharge and satisfy debts or to incur loans in the best interests of the family would not also include the power to keep the debt alive by making an endorsement. 1953 Orissa 179 (Pr 11) [AIR V 40 C 60] : I L R (1953) Cut 221 (DB).

[5] Where the original holder of a hand-note was a bank and the plaintiff brought a suit based on the hand-note on the basis of an endorsement of assignment by G, the general manager of the bank, in his favour: *Held*, that it was incumbent upon the plaintiff to have proved the authority and that the mere fact that G was the General Manager was not sufficient for the purpose of proving that the endorsement was a valid one and a competent one. The plaintiff was therefore bound to be non-suited. (57) 23 Cut L Tim 322 (323).

**5. Negotiable instruments by manager or other members of joint Hindu family.**—

[1] The rule that in order to make a person liable on a promissory note, the liability must appear on the face of the document, does not apply to promissory notes executed by the managing member of a joint Hindu family and it is established that liability was incurred by the managing member of the family for the benefit of the family or for family business, then it is not open to the other members of the family to plead that, because to evidence such liability a promissory note was executed on which neither their names appear nor is it specified that the liability is incurred for the purposes of or on behalf of the joint family, they are not liable. Their liability follows from this authority of the managing member to make other members liable for the contracts made by him for the benefit of the family or for carrying on legitimate business of the family. 1933 Lah 494 (496) [AIR V 20] (DB) + 1922 All 116 (117) [AIR V 9] : 44 All 393 (DB). (As manager is not mere agent, other members are liable on negotiable instrument drawn by him.) (07) 11 Cal WN 139 (140) (DB). (Sections 26, 27 and 28 do not touch agency of this nature.) (1942 Pat 337 (338) [AIR V 29] (DB) + 1935 Pat 51 (51) [AIR V 22] + 1933 Pat 263 (263) [AIR V 20].

[But see 1925 Cal 1153 (1155) [AIR V 12].]

[2] While the members of a joint Hindu family are liable for the debts contracted by the manager for family purposes and their interest in the family property can be attached for the realisation of the debts, they are not personally liable either for the debts or upon a negotiable instrument executed by the manager. 1953 Orissa 179 (Pr 7) [AIR V 40 C 60] : I L R (1953) Cut 221 (DB) + 1954 Trav-Co 495 (Pr 2) [AIR V 41 C 172]. (Pro-note by Karnavan of a Tarwad or a Karta of a joint Hindu family.)

[3] Karta executing a promissory note is bound by it whether he executes on behalf of

**Section 27 — Note 5 (contd.)**

the family or in his individual capacity. Other members are not personally liable unless they sign but their interest in the family property can be reached. Manager who signs the promissory-note as manager for family purposes, can be sued on the note so as to bind the family just as effectively as if he had executed a mortgage or a bond. 1951 Nag 307 (Prs. 10, 17, 18) [AIR V 38 C 91] : ILR (1950) Nag 806 (DB).

[4] The manager of a joint Hindu family is not an agent. He is not like a partner who can be treated as agent of other partners. 1951 Nag 307 (Pr 12) [AIR V 38 C 91] : ILR (1950) Nag 806 (DB).

[5] Decree obtained against Hindu father alone on basis of pro-note and not on basis of debt — Decree can be executed against son's share under pious obligation rule provided decree debt in its inception was not illegal or immoral. 1947 Mad 213 (214, 215) [AIR V 34 C 109] : ILR (1947) Mad 471 (DB).

[6] Decree obtained on the basis of a negotiable instrument (promissory note) executed by a person who may happen to be a manager of a Hindu family (other than a father) cannot be executed against the members of the family not parties to the instrument. 1955 N U C (Orissa) 5690 [AIR V 42].

[7] A promissory-note executed by a person in his own name and which does not show that he executed it as the manager of a joint Hindu family cannot be enforced against the other members of the family even though the debt is proved to have been incurred by him as manager for the benefit of the family. 1933 Nag 160 (161) [AIR V 20] : 29 Nag L R 312 \* 1930 Bom 424 (427) [AIR V 17] \* (32) 15 Nag L Jour 5 (7).

[8] Where a junior member of a joint Hindu family incurs debt on a handnote for a legal necessity of the family, the handnote is binding on the family. Sections 28 and 27 have no application to such a case since no question of agency arises. 1957 Orissa 212 (Prs 6, 8) [AIR V 44 C 58] : ILR (1957) Cut 361.

[9] Younger brother in joint Hindu family borrowing money for benefit of family on promissory-note—Elder brother who is karta, accepting liability and executing another promissory-note — Promissory-note by elder brother is binding on younger brother. 1942 Oudh 161 (163) [AIR V 29] : 17 Luck 226.

[10] Promissory-note executed by member in his own name without disclosing that he executed it as manager — Promisee or holder can sue on the debt as opposed to promissory-note. 1933 Nag 160 (161) [AIR V 20] : 29 Nag L R 312 \* 1934 Pat 629 (629) [AIR V 21].

[See 1936 Nag 252 (253, 254) [AIR V 23].]

[11] If the suit loans had been proved to have been contracted by the manager of a joint Hindu family for the purposes of the family, there is nothing in the Negotiable Instruments Act which would debar the plaintiff from suing upon the handnotes so as to make the family liable. 1953 Orissa 179 (Pr 7) [AIR V 40 C 60] : I L R (1953) Cut 221 (DB).

[12] There is nothing in the Negotiable Instruments Act which should preclude a

Court from applying the principles of Hindu Law to a suit based on negotiable instrument. Indeed, it would always be open to the holder of the instrument to sue the maker and the acceptor of the instrument and he need not sue all the members of the joint family, if he so chooses. He will also be entitled to avail himself fully of the benefit of the specific provision in the Negotiable Instruments Act, which is to the effect that once the execution of the document is proved, consideration will be presumed. He may, however, waive the benefit of this provision and adduce direct evidence to prove the passing of consideration. Similarly, there should be nothing to prevent him if he has evidence in his possession from proving that the maker of the instrument borrowed money to meet a family necessity and if he succeeds in proving it, the Court should not refuse to apply the Hindu Law on the subject, merely because the suit is based on a negotiable instrument. 1939 Pat 97 (104, 106) [AIR V 26] : 17 Pat 549 (DB).

[13] Frame of the suit or question relating to adjectival law or even consideration based on commercial convenience to be found in Act, should not be allowed to prevail against substantive law or to decide point finally whether other members of family would or would not be liable for debts incurred by manager. 1942 Mad 62 (66) [AIR V 29].

[14] Karta of joint Hindu family borrowing money from time to time for necessities of family — Successive accounts taken and new promissory notes executed by karta — Suit on last promissory note so executed against karta and other members — Plaintiff giving series of transactions and mentioning that note was executed as proof thereof — Cause of action alleged on date when hand note was executed — Held that the plaintiff could and ought to be treated as claiming repayment of a debt evidenced and acknowledged by the hand-note — Assa but was maintainable against all other members who were liable only to the extent of their share in the family property. 1939 Pat 400 (492) [AIR V 26] (DB).

[15] Execution of pro-note by member of joint Hindu family — Endorsement assignor only pro-note — Endorsee had remedy only against executant and not against other members of family. 1940 Mad 174 (175) [AIR V 27].

[16] See also S. 28.

**6. Negotiable instruments by partner of firm.**—[1] Section 27 involves the consequence that, so far as the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque are concerned, these acts must, in order to bind the firm, be done by a partner in the name of the firm and it is not sufficient that they are done in any other manner expressing or implying an intention to bind the firm which, under S. 22 of the Partnership Act, would otherwise be sufficient to bind the firm, for the latter section must yield to the special provisions of the Negotiable Instruments Act. 1945 Mad 439 (440) [AIR V 32].

[2] It is not necessary that the negotiable

**Section 27 — Note 6 (contd.)**

instrument should be signed by the partner in the name of the firm; but the name of the firm as the party liable on the note must be sufficiently disclosed. 1945 Mad 439 (440) [AIR V 52]\* 1928 Mad 1196 (1198) [AIR V 15]. (Where some of the partners signed the agreement without mention of their capacity and the instrument disclosed that the agreement was made on behalf of the firm, held that the other partners also were bound by the agreement.)

[3] Neither the recital in the note that the borrowing was for the purposes of the firm's business nor the description of the executant in the preamble as a partner of the firm can be regarded as sufficient to disclose that the firm is the party liable on the note and is perfectly consistent with his executing the note as the party liable on it. 1945 Mad 439 (440) [AIR V 52].

[4] Where a promissory note is executed by one of the partners of a firm not in the name of the firm but in his individual capacity, it is binding only on the executant and not on the other partners of the firm. 1933 Bom 101 (103) [AIR V 20] (DB)\* 1938 Nag 252 (253) [AIR V 23]\* 1933 Rang 131 (133) [AIR V 20].

[5] Pro-note signed by one partner alone but headed by partnership name—Form of pro-note held showed that that partner alone was liable—Other partner not liable. 1928 Lah 722 (724) [AIR V 15] (DB).

[6] A promissory note written in Tamil contained only one signature which contained the personal name of one of the defendants together with the initials of the defendant firm—*Held* that the defendant who signed the pro-note was not signing for himself but on behalf of his firm and that this custom was fully recognized among the Chettys trading in Bangoon. 1933 Rang 265 (267) [AIR V 20]. (Under the law merchant, evidence of usage has always been admitted to explain written documents; such evidence is also sanctioned by the Indian Evidence Act; and commercial usage has been expressly recognised in the Negotiable Instruments Act.)

[7] Where it is evident from an instrument that the intention is to make a firm liable it is not necessary that the name of the firm should be written immediately above the signature of the person signing that instrument. 1930 Sind 4 (6) [AIR V 17]. (A hundi purported to come from a firm. On the instrument were words purporting to show the drawer as the firm. After giving compliments of the firm it proceeded "further we have drawn on you one receipt for Rs. 1,000." The signature of the partner of the firm who signed the hundi was preceded by the word "dustkhat"—*Held* that the prefixing of "dustkhat" to the signature denoted that the person incurred no personal liability on the instrument. It was the firm which was to be liable on the instrument and not the partner.)

[8] In the absence of express or implied agency, partnership cannot be presumed and therefore a debt incurred by the managers of the trade by executing a promissory note is

not binding on the other members. 1934 Mad 327 (329) [AIR V 21] (DB).

[9] The mere fact that the executant of a pro-note describes himself as the proprietor of a firm and the document is written on a note-paper with the name and description of the firm printed on it is not sufficient to hold the firm liable on the pro-note. The name of a person or firm to be charged upon a negotiable instrument must be clearly stated on the face or the back of the instrument, so that the responsibility is made plain and can be instantly recognised. 1954 Lah 815 (816) [AIR V 21] : 15 Lah 901 (DB).

[10] *See also* S. 28 and Ss. 18 to 22 generally of the Partnership Act (IX of 1932).

[11] A promissory note ran as follows: "I, the undersigned B son of A have undertaken the work of supply under military contract at P. That the a (contract) stands in the name of M and Brothers. I am carrying on its management and I have got its full power. Rs. 6,000, in words, Rupees six thousand, in cash have been taken from S on 21st February, 1952, for supply in the month of February in the presence of G. That amount I will return to Suganmal when he shall ask for it. Dated 21st February, 1952." The signature on this read "B for M and brothers." *Held*, that on a fair reading of the instrument, the promissory note was executed by B representing M and Brothers and it was M and Brothers who were indicated as the principal who would be liable on it. 1959 Bom 90 (Pr 8) [AIR V 46 C 54] : ILR (1959) Bom 458.

[12] Where there is a loan to the firm, and an independent security for that loan is taken from one of the partners, the enforceability or otherwise of the security cannot affect the lender's right to maintain a suit on the cause of action which he has against the firm on the loan. S. 27 does not apply to the case. 1958 Ker 257 (Pr 9) [AIR V 45 C 91] : ILR (1957) Ker 968 (DB).

**7. Negotiable instrument by guardians—**  
*See under* S. 28.

**8. Negotiable instruments by executor—**

[1] Executor — Promissory note by—No indication that estate was to be charged except that loan was required for carrying out directions under will—Estate of testator cannot be directly proceeded against. 1918 Mad 500 (503) [AIR V 5] (DB)\* 1937 Mad 153 (155) [AIR V 24] (DB). (Promissory note executed by executor, creditor cannot have direct claim against estate of testator even though amount was borrowed for carrying out provisions of will.)

**9. Negotiable instruments by trustees—**

[1] Promissory note executed by trustee of religious endowment—No express or implied stipulation that creditor should be repaid from temple properties—Creditor is not entitled to decree charging amount due under promissory note under trust property. 1942 Mad 198 (198, 199) [AIR V 29] \*1942 Mad 468 (469) [AIR V 29]. (Promissory note executed by trustee of temple—Body of document clearly binding executant and not temple—Description of promisor at the beginning and



## 28. Liability of agent signing.

An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

### Section 27 — Note 9 (contd.)

after his signature as "adalthedar" — *Held* that this was not sufficient to show that the promisor was signing on behalf of the temple.) \*1919 Mad 616 (618) [AIR V 6] : 41 Mad 815 (DB).

[2] See also S. 28.

**10. Negotiable instruments in favour of agent.**—[1] Principle that under a negotiable instrument signed by the agent, latter is personally liable unless the intention that he signs as agent or that no personal responsibility is intended, is made clear, applies also to the case of payee. 1918 Mad 524 (525) [AIR V 5] (DB).

**11. Negotiable instruments by Director of Company.**—[1] Director of Company executing promissory note thereby promising to pay certain amount both in personal capacity as well as on behalf of company — His signature having at its top words "on behalf of Company" impressed by rubber-stamp—*Held*, that this endorsement at top did not alter his personal liability. 1940 Cal 177 (178) [AIR V 27] (DB).

[2] Where the promissory note was signed by *T* and below his signature appeared the word "Managing Agent, D. & Co." but it appeared that the Articles of Association of the said company did not authorize *T* to sign the note, *held*, that the executant was not an authorised agent and that the company was not liable under the note. 1930 All 778 (778) [AIR V 17] : 52 All 883 (DB).

[3] *A* and *B* partners of company *C*—Company *C* managing agents of company *D*.—*D* authorising Bank to accept and honour, negotiable instruments issued by partners of company *C*, on behalf of company *D*—Bank account opened in name of *D*—*A* and *B* drawing cheques on the account—No mention in cheques that they were drawn on the account of company *D*—Cheques amount paid to *C*—Suit by *D* against Bank for recovery of amount, on ground that *D* was not bound by the cheques under S. 89, Companies Act—No allegation of want of authority to draw cheques on part of *A* and *B* not alleged—*Held*, that in order to protect the bank its action should be *bona fide* and the person drawing the cheques and person honouring them must intend that cheques were to operate on certain account, these conditions were satisfied and the Bank was protected. 1956 Bom 57 (Prs 6, 7) [(S) AIR V 43 C 12] : 1 I L R (1955) Bom 1072 (DB).

[4] Section 89, Companies Act, emphasises the same principle as in S. 27, Negotiable Instruments Act, that company will not be bound in its corporate capacity in respect of a negotiable instrument unless that negotiable instrument on the face of it and according to its tenor makes it clear that it is a negotiable

instrument made, drawn, or endorsed by the company itself. 1956 Bom 57 (Pr 1) [AIR V 43 C 12] : ILR (1955) Bom 1072 (DB).

### 12. Negotiable instrument by husband.—

[1] Promissory note in Tamil by *S*, husband and agent under power-of-attorney of his wife reciting that it was "in respect of debt due by my wife's junior paternal uncle"—*Held*, that instrument must be held to have been executed by *S* as agent of his wife. 1941 Mad 417 (426, 427) [AIR V 28] : ILR (1941) Mad 513 (FB). (AIR 1935 Mad 447 (FB), *Overruled*.)

## SECTION 28 — SYNOPSIS

1. Scope.
2. Personal liability of agent.
3. Trustees.
4. Manager of joint Hindu family.
5. Partners of firm.
6. Guardians.

1. Scope.—[1] Section 28 does not apply if promissory note is not negotiable. (10) 11 Cal L Jour 236 (241) (DB).

[2] Section 28 does not apply only to negotiable instruments written in English. (15) 14 Mad L Tim 502 (504) (DB).

[3] Effect of S. 26 of the English Bills of Exchange Act is not same as that of S. 28. Hence English decisions can be of no assistance in construing S. 28. 1941 Mad 417 (425) [AIR V 28] : ILR (1941) Mad 513.

[4] Principle of S. 28 that if promissory note is made payable by person as agent of another, latter is not liable personally on note, applies also to case of payee. 1918 Mad 524 (525) [AIR V 5] (DB).

[5] The language of S. 29 is widely different from that of S. 28. Under S. 28 it is sufficient to indicate that personal liability is excluded. Under S. 29 there must be express words limiting the liability, and under S. 25 the agent's liability may be altogether excluded but under S. 29 the executor's liability can only be limited to the extent of the assets. 1926 Mad 390 (392) [AIR V 13] (DB).

[6] Where a person after signing his name on a negotiable instrument adds "Managing Director or Managing Agent," it is not sufficient to indicate that he is making the Company liable and thereby excluding his personal liability. He must clearly indicate the name of the principal on the instrument itself and state that he is doing it for or on behalf of such principal as agent and not in his personal capacity. 1951 Raj 64 (65) [AIR V 33 C 25] (DB).

2. Personal liability of agent. — [1] It is of the utmost importance that the name of a person or firm to be charged upon a negoti-



**Section 25 — Note 2 (contd.)**

able document should be clearly stated on the face or on the back of the document so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand. It is not sufficient that the principal's name should be in some way disclosed. It must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the instrument. 1918 PC 146 (147) [AIR V 5 : 46 Ind App 33 : 48 Cal 683] + 1934 Lah 358 (359) [AIR V 21 : 15 Lah 652 (DB)].

[2] It is contrary to established rules to contend that in an action on a bill of exchange or a promissory note against a person whose name properly appears as party to the instrument it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal. 1918 PC 146 (147) [AIR V 5 : 46 Ind App 33 : 48 Cal 683] + 1934 Mad 327 (329) [AIR V 21] (DB) + 1937 Oudh 65 (66, 67) [AIR V 24] : 12 Luck 472 (DB).

[3] The Court cannot look into the surrounding circumstances when deciding whether the maker of a promissory note has executed it as the agent or the representative of another. It is the instrument alone which has to be looked at. If the authority of the agent is questioned his authority must be established before the instrument is looked at. It is the duty of the Court to read the instruments and judge its effect from the words used but a promissory note drawn up in vernacular language cannot always be construed according to the literal translation into English. Nor can the English rules of construction be applied in interpreting documents executed by the people of India in their own vernacular. When in a pro-note written in any Indian language the person after giving his own description adds that he is the agent of another it means that he is acting as the other's agent in the matter of the execution of the document. 1941 Mad 417 (421, 424, 426, 427) [AIR V 28] : ILR (1941) Mad 513 (FB) [AIR 1935 Mad 447 (FB), *Overruled*].

[4] Where a promissory note is such that on the face of it there is nothing to indicate that the promisor signed his name to the document as an agent or that he did not intend thereby to incur personal responsibility, nobody except the promisor can be sued on the note. 1920 Cal 911 (911) [AIR V 7] (DB) + 1937 Pat 428 (429) [AIR V 24].

[5] Where maker of a note described himself as agent in promote but his promise to pay was unqualified and the note was also signed without any addition to the signature by any reference to his alleged principal, he could not evade personal liability. Agent will be liable unless he clearly expresses in instrument that he does not incur personal liability. 1916 Mad 293 (295) [AIR V 3] : 38 Mad 482 (FB) + (12) 23 Mad L Jour 417 (426) (DB).

[6] Unless the maker has clearly affixed his signature to the negotiable instrument on account of or on behalf of a principal whose name is clearly disclosed or unless though he has signed his name unconditionally, he has

unequivocally and clearly disclaimed in some portion of the document his own responsibility and mentions the name of the person really liable, he cannot escape personal responsibility. (15) 14 Mad L Tim 502(504)(DB).

[7] A promissory note was executed by a person signing it for himself and on behalf of another as his agent. In the body of the note the name of the person alone signing it was mentioned—*Held* that the person on whose behalf the note was executed was also liable because there was nothing to preclude an agent from signing for himself and also on behalf of his principal. 1936 Mad 417 (418) [AIR V 23].

[8] Where a Chairman of Co-operative Society executed promissory note describing himself as Chairman of Co-operative Society in the body of the instrument but neither expressly excluding his personal liability nor stating that he was executing promissory note on behalf of Society—*Held* that he was personally liable under S. 28. 1932 Bom 607 (608, 609) [AIR V 19] (DB).

[9] Section 28 can have no application to a case where it is found that the defendant signed Hundi as mumm of firm and that money was lent not to him in his personal capacity but to firm. 1923 All 407 (407) [AIR V 10] (DB).

[10] Where the preliminary words of the Hundi clearly indicated that the drawers of the Hundis were the firm of Budhumal and that their name was the real name of the persons liable on the Hundis, *held* that the mere fact that the defendants signed the Hundis without mentioning that they were doing so as agents or servants of the firm will not make them personally liable under the Hundi. 1923 Lah 197 (203) [AIR V 10] : 4 Lah 142 (DB).

[11] When promisor describes executant as agent in body and agent signs as agent he is not personally liable, inference being he did not intend to make himself personally liable. 1915 Mad 1131 (1132) [AIR V 2].

[12] Agent executed promote to which he put his signature, prefixing his principal's "vilaxam" thereto. Amount was debited to principal, in the body of note. *Held* that principal alone was liable. 1919 Mad 183 (183) [AIR V 6] (DB).

[13] Where the promissory note executed by a person while he was the common manager of an estate, does not indicate that he executed it as agent of the proprietors and in the body of the note he does not say that he was executing it as common manager and on behalf of the proprietors and the addition of the words "common manager" after his signature, appear to be only words of description of the position of the person, the person is personally liable under the promissory note. (36) 164 Ind Cas 728 (729) (Cal).

[14] Where authorized agent of *mahant* executed hand-note for obtaining court-fee for appeal from suit filed by *mahant* and it was found that the use of the money by the agent for the purpose of litigation was for the personal purposes of the *mahant*, the *mahant* was personally liable to repay loan and he would be liable to personal decree

**Section 28 — Note 2 (contd.)**

against him, and that he was bound by act of his agent—*Held* case was not one of signature by agent for undisclosed principal as signatory was *mahant* though actual signature was given by authorised agent. 1934 Pat 435 (437, 438) [AIR V 21] (DB).

[15] Where agent borrows and executes promissory note in his personal capacity, under S. 28, agent alone can be held liable, but in suit on original consideration principal may be held liable in proper case. 1932 Nag 27 (27) [AIR V 19] : 27 Nag L R 324.

[16] It is contrary to all established principles that in an action on a bill of exchange or promissory note against person whose name properly appears as a party to the instrument, it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal. None but the executants must be made liable. But it is open to the plaintiffs to frame their case in an alternative form and to sue both on the hundis and alternatively upon the consideration. 1937 Mad 1 (3) [AIR V 24].

[17] The essence of a tripartite arrangement between a third person, promisor not agent of the third person and promisee was to conceal third person's indebtedness from the promisee and to make him believe that the promisor was the debtor. The promisor lent himself to the scheme fully understanding that its object was the deception of the promisee—*Held* that the promisor was not induced by the promisee to believe that he would not be held liable upon his promissory notes within the meaning of S. 28. 1929 P C 297 (298, 299) [AIR V 16] : 57 Ind App 1 : 5 Luck 1. (AIR 1926 Oudh 248, *Reversed*.)

[18] Where bill of exchange is accepted by agent of drawee, acceptance is good. The hand that holds pen is immaterial, if in fact there is authority to sign. 1930 Cal 697 (700) [AIR V 17] : 57 Cal 695 (DB).

[19] On a plain reading of Ss. 27 and 28, a general authority to transact business and to discharge debts does not confer upon an agent the power of endorsing bills of exchange so as to bind his principal. Nor can an agent escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability. 1953 Orissa 179 (183) [AIR V 40 C 60] : 1 L R (1953) Cut 221 (DB).

**3. Trustees.** — [1] In a suit on a promissory note executed by trustee or executor who does not however sign as trustee or executor, there can only be a personal decree against executant, or, if the executant is dead, against his or her legal heirs, and there cannot be decree against the trust estate or testator's heirs. 1918 Mad 300 (303) [AIR V 5] (DB).

[2] Promissory note executed by trustee—Liability restricted to personal promise—Suit on promissory note—Decree against trust properties cannot be passed. 1942 Mad 198 (198, 199) [AIR V 29].

[3] Trustees or managers of temple borrowing money on promissory notes incur personal liability and S. 28, or its principle does not apply to such pronotes. 1943 Mad 247 (248) [AIR V 30].

[4] Trustees who executed a promissory note on behalf of a Devaswom are liable for the debt and no decree can be passed against the assets of the Devaswom even though the money was borrowed and utilised for necessary purposes of the Devaswom, when beyond the description of the executants as uralars and the statement that the debt had been borrowed for purposes of the Devaswom there is no indication in the promissory note that the uralars wanted to exclude their personal liability. 1951 Mad 423 (424, 425) [AIR V 38 C 128].

**4. Manager of joint Hindu family.**

[1] Although endorsee of a promissory note executed by manager of joint Hindu family cannot sue other members on the debt and recover the debt from their share in the family property yet if endorsee retransfers the promissory note in favour of the original creditor a suit can be filed by the original creditor against the maker and other members of the family to recover the debt from shares of all the members in the family property. 1947 Mad 129 (129, 130) [AIR V 32].

[2] A suit on a promissory note executed by Karta of a joint Hindu family for goods and cash advance taken from time to time for the family for which he executed several 'hatchathis' and hand-notes is a suit based on the debts with the pro-note as proof of it and can be maintained against minors against whom the effect of the hand-notes is to keep alive their liability as debtors and not to impose any new liability. 1939 Pat 490 (492) [AIR V 26] (DB).

[3] The endorsee of a promissory note executed by the managing member of a Hindu family is limited to his remedy on the note. Unless the endorsement is so worded as to transfer the debt as well and the stamp law is complied with, and therefore in the case of an ordinary endorsement, the indorsee cannot sue the non-executant co-parceners on the ground of their liability under the Hindu law. 1938 Mad 377 (379) [AIR V 25] : 1 L R 1938 Mad 568 (FB). (AIR 1917 Mad 61, *Overruled*.)

[4] Although the liability of co-parceners can be enforced in suit upon note executed by manager, such liability is external to the note and does not arise until the manager's liability has been established. 1934 Mad 350 (352) [AIR V 21].

[5] Person is not liable upon a pro-note on bill of exchange unless his name appears in such manner as to make him the person really liable on it—Only one exception has been made to this rule and that is case of Karta of joint Hindu family. 1942 Pat 337 (338, 339) [AIR V 29] (DB).

[6] The fact that a decree is obtained on a pro-note is not conclusive with reference to the contention that a decree obtained on the basis of a negotiable instrument executed by a person who may happen to be a manager of a Hindu family (other than a father) cannot be executed as against the members of the family not parties to the instrument. 1955 N U C (Orissa) 5690 [AIR V 42] (DB).

**5. Partners of firm.**—[1] Where a person executing a promissory note alleges that he

## 29. Liability of legal representative signing.

A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

### Section 25 — Note 5 (contd.)

executed it on behalf of a firm of which he is a partner, unless the responsibility of the firm is made plain and can instantly be recognised or the instrument passes from hand to hand ordinarily the person signing alone will be liable. Where a promissory-note is signed by one person alone and there is nothing to show that he has signed the document on behalf of a joint family firm the signature standing by itself must be construed as a personal signature and the family is not bound on the face of the document. 1936 Nag 252 (253) [AIR V 23].

[2] Where a partner executed a promissory-note in which he described himself in the body of the note as a partner but it was signed by the executant without any further designation — *Held* that as the executant had signed the note without indicating that he did not intend to make himself personally liable he was personally liable and the other partners were not liable on it. 1938 Mad 984 (985) [AIR V 23].

[3] Where a promissory note has been signed personally by all partners of a firm individually, adjudication of one of the partners in the firm's name as insolvent and his composition with the creditors will not absolve the other partners who were no parties to the insolvency proceedings and the composition from their personal liability under the promissory note. 1927 Rang 99 (100) [AIR V 14] : 4 Rang 551 (DB).

[4] Pro-note signed by person as managing partner — Words held not merely descriptive but indicated liability of firm. 1944 Oudh 273 (274) [AIR V 31] : 20 Luck 1.

6. Guardians. — [1] Principle in S. 28 applies to cases of guardian and ward. 1926 Mad 390 (392) [AIR V 13] (DB).

[2] Mere description of executant as guardian of minor is not sufficient to indicate that executant did not intend to bind his own estate but of the minor. 1927 Mad 1018 (1019) [AIR V 14]. (Cases on contracts have no application.)

[3] The Negotiable Instruments Act contains no provision as to promissory-notes, signed by guardian and Ss. 28 and 30 of the Act do not cover all cases of representation and cannot therefore be applied to them. The case of one person signing for another who is *sui juris* is not *pari passu* with that of a person executing a document on behalf of another who is incapable of contracting. 1916 Mad 677 (678) [AIR V 3] : 39 Mad 915 (DB).

[4] Promissory note executed by mother — Minor sons described in body as makers — But note signed by mother not as guardian — Original note executed in renewal of promissory-note executed by father — Minor sons are liable for debt on note. 1935 Mad 447 (448, 449) [AIR V 22] : 58 Mad 735 (FB). (Overruled in AIR 1941 Mad 417 (FB), on another point.)

[5] A promissory note contained the sentence "To this effect is the promissory note executed with our consent and in the handwriting of T. V. S., the guardian T. V. S.", signed his name alone across the stamp and again below the stamp as guardian for minor S. — *Held* that the guardian also made himself personally liable. 1935 Mad 160 (161) [AIR V 22].

[6] Even if a promissory note does not disclose that the borrowing was on behalf of the minor, still the minor's estate would be liable for the debt evidenced by the promissory-note if it is proved to have been incurred for his benefit or in respect of which he was otherwise liable. (39) 50 Mad L W 374 (374).

[7] It is only in a case where the guardian has been made a party to the suit and the equities between the guardian and the minor could be worked out by applying the principle of subrogation that a decree can be passed against the minor on a promissory note. 1958 Andh Pra 713 (715) [AIR V 45 C 208] : 1 LR (1957) Andh Pra 429 (DB).

### Section 29 — Note 1

[1] Term "legal representative" in S. 29 includes executors or administrators. 1928 Mad 390 (394) [AIR V 13] (DB).

[2] It is not necessary for the applicability of S. 29 that the alleged executor should be executor in fact. 1928 Mad 390 (393) [AIR V 13] (DB).

[3] Executant of pro-note not signing it in representative capacity is personally liable. 1916 Sind 66 (69) [AIR V 3] : 9 Sind L R 150 (DB).

[4] Executor or guardian is personally liable on pronote executed by him, though it is for benefit of estates concerned, unless such liability is excluded in manner provided in S. 29. 1925 Mad 371 (372) [AIR V 12].

[5] Section 29 applies where person signs promissory note without adding anything to show that he is acting as executor or administrator, but not where the payee deals with the promisor as an executor. 1928 Bom 539 (545) [AIR V 15].

[6] Under S. 29 the liability should be expressly limited and not merely impliedly. Where a pronote executed by certain executors was headed "Estate of the Late A" and in body of note as well as in signature the executants described themselves as executors of A it was held that the executors were personally liable as they had not expressly limited their liability to assets received by them. 1933 Bom 444 (445) [AIR V 20] (DB) + (35) ILR (1955) Mys 187 (189).

### 30. Liability of drawer.

The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

#### Section 30 — Note 1

[1] Drawer of hundi, not surety for its acceptance—Hundi not accepted—Liability of drawer—The drawer of a hundi is not a surety for acceptance because the drawee does not become liable until he accepts. Therefore, unless and until he does that, there is no debt for which he can be held responsible. It follows that there is no principal for whom the drawer can stand surety. Therefore when there is no acceptance, the liability of the drawer is as principal debtor under implied contract of indemnity. His undertaking is conditional only and his liability does not arise unless instrument is dishonoured either by non-acceptance or by non-payment. 1938 Nag 262 (263) [AIR V 25] : ILR (1940) Nag 502.

[But see 1916 Bom 294 (295) [AIR V 3].]

[2] Hundi—Namjogi Hundi—A obtaining Namjogi Hundi drawn by B and made payable to C—A sending it to C by ordinary post—Hundi intercepted by thief and payee's name removed and another name substituted for it. Amount of Hundi paid by drawee to person substituted by thief as endorsee—Drawer held not liable—Drawee held liable in damages for wrongful conversion of hundi, measure of damages being amount of hundi. 1940 Bom 82 (84) [AIR V 2] (DB).

[3] Drawer of bill of exchange or cheque cannot set up collateral agreement as defence to claim under S. 30. When, as security for acceptance, drawer of hundi handed over to Bank, Railway receipts for goods consigned to him as collateral security and Bank through mistake handed over receipts to drawee before acceptance, loss of collateral security in no way affects their right to recover amount of hundi from drawer. 1915 Sind 24 (25) [AIR V 2] : 9 Sind L R 92 (DB).

[4] D/A drafts discounted with bank—Confirmed credit therefor provided in another bank—Drafts dishonoured after acceptance—Documents of title delivered to consignee on acceptance of drafts—Claim against drawers—Delivery of documents not unreasonable—Drawers are liable in the absence of express contract or other duty having that effect—Discounting is not an out and out sale. 1927 P C 195 (203) [AIR V 14] : 54 Ind App 317 : 55 Cal 1.

[5] A cheque ordinarily operates as a conditional payment which is rendered ineffective if it is not honoured. The same position arises in the matter of hundis. 1957 Punj 257 (258) [AIR V 44 C 93] (DB).

[6] A drew a cheque on B bank in favour of C or bearer and after crossing it generally handed it to C who endorsed it in blank and gave it to his servant D with direction to pay it into local treasury. D went to E, a banker by profession, cashed it and disappeared with the money. On instructions from A, the Bank B refused the payment of the cheque to E who

demanding the payment from A and C; the drawer and endorser respectively of the cheque, and on their refusal to pay sued them for the money; *Held*, that as E had no cause to believe the defect in title of D, he was a holder in due course and as such was entitled under S. 35 to claim payment from A and C on the drawee Bank B's refusal to pay. 1952 All 590 (594) [AIR V 39] : ILR (1951) 2 All 674 (DB).

[7] Cheque drawn on branch X of Bank A handed over to Bank B for collection—Cheque sent by Bank B to branch Y of Bank A for realisation—Amount realised from branch X but amount not realised by Bank B by reason of Bank A going into liquidation—Branch not juridical person—Cheque is dishonoured by Bank A—Only party liable is drawer and not bank B. 1952 Cal 385 (386) [AIR V 39].

#### Notice of dishonour.

[8] Drawer of hundi is not liable if due notice of dishonour is not given to him and fact of payee demanding payment two months after maturity is not sufficient compliance with Ss. 93 and 106 of Act. 1929 Lah 577 (578) [AIR V 16] : 11 Lah 34 (DB).

[9] Sections 30, 93 should be read along with S. 98. When no formal notice of dishonour is given and it is alleged that party charged did not suffer damage for want of such notice, burden of proof lies on person who did not give notice to prove absence of damage. (11) 1911 Pun L R No. 173, p. 637 (638).

[10] A drew a cheque on B in favour of C on 23-3-1945. C presented the cheque B for payment on 21-3-1945 but it was returned with endorsement that it would be honoured after collection of assets of the drawer. C then negotiated the cheque with plaintiff Bank and received full payment. The plaintiff then presented the cheque to B on 26-5-1945, but it was dishonoured on ground that the payment had been stopped by the drawer. The plaintiff thereupon sued A and C for recovery of the amount of the dishonoured cheque. *Held*, that (1) the endorsement, dated 23-3-1945 did not amount to a dishonour of the cheque within S. 92, Negotiable Instruments Act and therefore the plaintiff was the holder in due course when the cheque was subsequently dishonoured on 26-5-1945. (2) The drawer A was liable to compensate the plaintiff under S. 30 and as the cheque was dishonoured after the payment was stopped by A, no question of notice to A under S. 30 could arise. 1951 Assam 127 (129) [AIR V 38 C 60] (DB).

[11] Under S. 30 the drawer of a cheque is liable to pay only when (1) the cheque is dishonoured and (2) notice of such dishonour has been given or circumstances exist which render it unnecessary to give such notice. The notice of dishonour is, therefore, a part of the cause of action on a dishonoured cheque. 1951

**31. Liability of drawee of cheque.**

The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

**32. Liability of maker of note and acceptor of bill.**

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the

**Section 30 — Note 1 (contd.)**

Cal 262 (263) [AIR V 38 C 55] : ILR (1950) 1 Cal 606.

[12] Where the holder of a hundi payable at sight without presenting it for acceptance presents the same to the drawee for payment and the hundi is dishonoured, notice of dishonour to the drawer is necessary and where the same is not given within a reasonable time the drawer is absolved of his liability on the hundi. 1958 Pung 222 (227) [AIR V 45 C 60] : ILR (1958) Pung 1178 (DB).

[13] It is no doubt true that a holder of a cheque who brings a suit against the drawer of the cheque on basis of his liability on account of the dishonour of the cheque is bound to give previous notice to the drawer and further if he takes up the plea that notice was not necessary under the circumstances as provided in S. 98 of the Act it is for him to prove any of the conditions mentioned in S. 98. But where the suit by the holder is not for compensation on account of dishonour of the cheque but on the contrary for recovery of the balance of money due on the original transaction of having supplied paddy and in discharge of which the dishonoured cheque was given, no question of notice of dishonour can arise. 1954 Orissa 124 (126) [AIR V 41 C 56] : ILR (1954) Cut 46 (DB).

[14] Strictly no notice of dishonour would be necessary to the drawer who has not provided sufficient funds to meet the cheque. Even if such a notice of dishonour is necessary where it has been sufficiently established that the drawer did not suffer any damage by reason of the failure to give notice because he had no cause of action against the holder under the negotiable instrument, namely the cheque, S. 98(c) would apply to the case. (57) 1957-27 Com Cas 494 (496, 497) (Mad).

**Section 31 — Note 1**

[1] Drawee is not liable as such on hundi till he has accepted same. Burden of proof is therefore on holder, to show that drawee had accepted liability to pay. 1930 All 106 (107) [AIR V 17] (DB).

[2] Bank making payment through mistake in respect of cheque countermanded by drawer is not entitled to refund of amount from payee. 1930 Lah 852 (854) [AIR V 17] : 11 Lah 667 (DB).

[3] Money cashed on forged cheque—Owner of cheque book is not to bear loss unless gross negligence intimately connected with transaction is proved — In absence of this drawee is liable. 1924 Rang 264 (266) [AIR V 11] (DB).

[4] The default of payment no doubt gives a right to the drawer to claim compensation

but none-the-less there is an obligation on the drawee to make payment of the cheque on presentation if the funds are available. 1960 Assam 191 (203) [AIR V 47 C 47] (DB).

[5] The drawee of a negotiable instrument is not liable on it to the payee, unless he has accepted it. Under S. 32 the liability of the drawee arises only when he accepts the bill. There is no provision in the Act that the drawee is as such liable on the instrument, the only exception being under S. 31 in the case of a drawee of a cheque having sufficient funds of the customer in his hands; and even then the liability is only towards the drawer and not the payee. 1954 S C 554 (556) [AIR V 41 C 127] : 1955-1 S C R 503.

[6] Damages can be awarded even without proof of any special loss where a cheque issued by a non-trader-customer is wrongly dishonoured by the bank, even though the person might have suffered no special loss as a result of such dishonouring. In such cases the damages will only be nominal. But in cases where a cheque issued by a trader-customer is wrongfully dishonoured even special damages could be awarded without proof of special loss or damage. 1959 Mad 153 (154) [AIR V 46 C 47] : ILR (1959) Mad 198 (DB).

[7] Cheque drawn on branch A of Bank A handed over to Branch B for collection — Cheque sent by Bank B to branch Y of Bank A for realisation — Amount realised from branch X but amount not realised by Bank B by reason of Bank A going into liquidation — Branch not juridical person — Cheque is dishonoured by Bank A — Only party liable is drawer and not Bank B. 1952 Cal 385 (386) [AIR V 39].

[8] The proceeds of the cheque collected by a bank as agent of the holder are held by it as a trustee for him. Where one branch of a bank which is liable to honour a negotiable instrument validly debits the accounts of its own customer and transfers the money to another branch or to its head office the transaction does involve a receipt of money by the transferee bank. It is not merely a transfer of bank's money from one branch to another. The obligation to honour a cheque of a customer rests on the branch on which the cheque is drawn and no other and for this purpose the branch and the head office must be treated as different banks. 1950 Bom 375 (376, 377, 378) [AIR V 37 C 109].

**Section 32 — Note 1**

[1] If, on failure of principal debtor, the money is claimed from surety and the surety executes a promissory note he becomes a principal debtor. 1945 All 233 (234, 235) [AIR V 32] : ILR (1945) All 117 (DB).

amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

### Section 32 — Note 1 (contd.)

[2] Where a promote is executed in absence and without knowledge of payee to help friend of maker to raise money on it and money is subsequently advanced on such instrument to third party the promote must be deemed to have been executed for consideration. 1916 All 310 (311) [AIR V 3] (DB).

[3] Payee of a promissory note if he has made contract to contrary with maker cannot sue on note unless he has performed the contract, as maker can set up against payee such subsequent written agreement. (11) 7 Nag L R 39 (40, 41).

[4] General rule is that acceptor of bill of exchange is principal debtor and drawer is surety. It is open to acceptor to prove that by virtue of contract between himself and holder of bill of exchange, his liability is that of surety, and not of principal debtor. Mere notice of defendant's position as accommodation acceptor is insufficient to preclude holder from taking him as principal debtor. (10) 13 Oudh Cas 206 (213, 214, 217) (DB).

[5] The endorers of a hundi can, if they choose, avail themselves of the provisions of S. 78 read with S. 82 (c) and sue the drawer on the hundi which has not been honoured. But this does not prevent them from suing for compensation under S. 32 and S. 117 (c). 1928 Sind 86 (87) [AIR V 15] : 22 Sind L R 305.

[6] The fact that the maker of pro-note is partner of payee is no defence to suit on note unless instrument is treated as escrow or nullity. 1919 Mad 373 (373) [AIR V 6] (DB).

[7] Where by the promissory note the defendant undertakes an absolute engagement to pay on demand a sum of money together with interest thereon he is bound to pay the amount according to the tenor of the promissory note. The fact that the promissory note was with reference to some partnership transaction is insufficient to restrain a suit on the basis of the promissory note which is in such a form as to bind not the partnership firm but the defendant himself. The executant partner can, therefore, be sued upon by a copartner on the promissory note without taking final accounts of the partnership business and whatever the state of accounts between the two may be. 1960 Madh-Pra 113 (114) [AIR V 47 C 50].

[8] As a rule a creditor may always sue on the original consideration if the pro-note is not paid provided there are no circumstances which keep intact the liability of the maker under the pro-note. Payment of the amount due on a pro-note in order to discharge the maker must be made to the holder of the instrument though he may be a benamidar. So long as that is not done the liability of the maker continues. The fact that the holder of the pro-note though made a party to the suit on original consideration by the creditor does

not appear in the suit cannot bring about discharge of the maker's liability under the note by raising estoppel against him as the only method of discharge is indicated in S. 78 and there can be no estoppel against statute. 1957 Cal 753 (754) [AIR V 24] : 1 L R (1958) 1 Cal 450 (DB).

[9] There is essential antithesis between legal position of surety and that of executant of promissory note and so person executing promissory note cannot in law have position of surety. 1929 All 664 (665) [AIR V 16] (DB). (AIR 1924 Rang 360, Dist.)

[10] Maker of Hundi is not discharged by holder in due course getting payment of what is due and ultimate drawee is entitled to recover from maker what he paid. 1919 Oudh 331 (332) [AIR V 6].

[11] Where the execution of pro-note is admitted, the burden to prove exemption from payment is on the executant. 1940 Rang 152 (152) [AIR V 27] (DB).

[12] Promissory note executed by guardian mentioning minor as maker—Mere fact that promisee has to prove that transaction was for benefit of minor does not make liability under note conditional liability. 1955 Mad 447 (449) [AIR V 22] : 58 Mad 735 (FB).

[13] Hindu family can be sued on promissory note signed by manager alone — There is no presumption that other members are liable — That must be proved like any other fact. 1936 Nag 252 (253, 254) [AIR V 23].

[14] Agreement to purchase goods embodied in indent form—Buyers consenting to accept bills of exchange on presentation and to pay on maturity in spite of any objection which they may have regarding any variation from terms of indent—Such objection to be settled by arbitration—Suit for unpaid bills comes under S. 32 and cannot be stayed by virtue of arbitration clause. 1922 Lah 353 (353, 354) [AIR V 9] : 2 Lah 335 (DB).

[15] A obtaining Namjogi hundi drawn by B and made payable to C — A sending it to C by ordinary post — Hundi intercepted by thief, payee's name removed and another name substituted for it — Amount of hundi paid by drawee to person substituted by thief as endorsee — Drawee held liable in damages for wrongful conversion of hundi, measure of damages being the amount of hundi. 1940 Bom 82 (84) [AIR V 27] (DB).

[16] Pro-note purporting to be joint note of A and B in renewal of previous joint promote — A alone executing that note and B failing to execute it—Scribe writing at foot of note description of B as person who affixed his mark but no mark or thumb print in fact taken from B — No evidence that B authorised any one to affix his mark — B held not liable on promote — Note held binding on A in absence of evidence whether A executed it on faith

**33. Only drawee can be acceptor except in need or for honour.**

No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

**34. Acceptance by several drawees not partners.**

Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

**35. Liability of indorser.**

In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

**Section 32 — Note 1 (contd.)**

that *B* would also execute. 1940 Mad 874 (875, 876) [AIR V 27].

[17] German in Hamburg drawing bill of exchange in plaintiff's favour upon defendant against goods despatched in enemy (German) steamer—Bill of exchange accepted by defendant in Bombay before outbreak of war—Steamer arrived in Bombay but to avoid capture, departed to neutral port—Bill presented in due time and dishonoured—Government issuing proclamation allowing British subjects to obtain goods on enemy steamer in neutral ports—Defendant *held* liable on bill as soon as proclamation was issued. 1916 Bom 144 (146) [AIR V 3]; 41 Bom 566 (DB).

[18] *A* drawing bill of exchange on *B* in respect of goods indented from *A* by *C*—Bill accepted by *B* and not paid on due date—Suit by *A* against *B* for whole amount of bill—Trial Court holding that contract was for delivery of documents against payment and as on due date documents were not in possession of Bank which was acting as *A*'s agent *B* was not liable—*Held* that as between *A* and *B* the only contract expressed was the bill and the bill on the face did not show that payment was to be made against delivery of documents and as acceptance of bill by *B* was without qualification he was liable to pay it on its dishonour. (35) 54 Pun L R 645 (646, 647) (DB).

[19] *A* purchasing goods from *B* under C. I. F. contract—*B* to despatch goods and draw bills of exchange directing *A* to pay to Chartered Bank sum representing value of goods—*B* also entitled to recover value of goods from *A* whether property in goods had passed to *A* or not and whether bills had been accepted or not—Disputes arising out of agreement to be referred to arbitration—*B* accepting bills presented by bank before maturity—Bank indorsing bills to *B*—*A* refusing to honour bills on maturity—*B* held could sue *A* on accepted and dishonoured bills under S. 32—Arbitration clause held inappli-

cable to such suit as it was a dispute collateral to but not arising out of agreement. 1933 All 74 (75, 76) [AIR V 20] (DB).

[20] Contractual relations between parties in immediate relationship created by Negotiable Instruments Act are affected by Bihar Money-lenders' Act and hence Ss. 32 and 79, Negotiable Instruments Act, are overridden in this respect by Ss. 7 and 8, Bihar Money-lenders' Act of 1938. 1941 Pat 303 (305, 306) [AIR V 31]; 23 Pat 618 (FB). (AIR 1941 Pat 99; 19 Pat 974, *Overruled*.)

[21] The maker of a promissory note can obtain the discharge of a debt by payment to the holder alone and to none else. It makes no difference whether the holder is a benamidar or is a true owner. A person who is not the holder of the promissory note cannot maintain a suit for the recovery of the amount due thereon even though the holder is admittedly the benamidar and is impleaded in the suit. 1950 Pat 493 (494) [AIR V 37 C 128]; 29 Pat 608 (DB).

[22] Under S. 32 the liability of the drawee arises only when he accepts the bill. What is requisite for fixing the drawee with liability under S. 32 is the acceptance by him of the instrument and not an acknowledgment of liability. 1954 S C 554 (556, 557) [AIR V 41 C 127]; 1955-1 S C R 507.

[23] A suit on a promissory note can only be filed against the maker of the promissory note or his legal representative. 1951 Bom 345 (346) [AIR V 38 C 74]; 1 L R (1951) Bom 108 (DB).

**Section 33 — Note 1**

[1] Where person against whom a bill of exchange is drawn by name, accepts the bill for or on behalf of a corporation of which he is member there is no valid acceptance of the bill. 1925 Bom 252 (254) [AIR V 12] (DB).

**Section 35 — Note 1**

[1] Endorser responsible to every subsequent holder in case of dishonour by drawee



**36. Liability of prior parties to holder in due course.**

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

**37. Maker, drawer and acceptor principals.**

The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

**Section 35 — Note 1 (contd.)**

if he has notice of dishonour, except where (a) there is contract to contrary or (b) he expressly limits his liability in endorsement. (12) 17 Ind Cas 951 (951) (Low Bur).

[2] Liability of endorser is subject to contract to contrary either express or implied — Father and major son partitioning—Father endorsing pro-note in son's favour as its result — Implied contract to contrary can be inferred. 1933 Mad 61 (62) [AIR V 20].

[3] Dishonour by drawee is condition precedent to indorser's liability. 1925 Mad 444 (445) [AIR V 12] (DB).

[4] The word 'dishonour' in Ss. 30 and 35 have been used in its general and commercial sense. It is not confined to the limited definition in Ss. 91 and 92 of the Act. The Bill shall be deemed to be dishonoured for purposes of these sections when the drawer of the bill makes default in payment upon being duly required to pay the same. 1958 Punj 222 (228) [AIR V 45 C 60] : ILR (1958) Punj 1178.

[5] Endorser can prove his limited liability by oral evidence. 1928 Sind 50 (52, 53) [AIR V 15] : 22 Sind L R 249 (DB).

[6] The requirement of a notice of dishonour to an endorser by the endorsee underlying S. 35 of the Negotiable Instruments Act is a matter of principle and such notice must be given within a reasonable time where the endorsee wants to raise his claim against the endorser. 1956 Raj 129 (134, 135) [AIR V 43 C 40] : ILR (1956) 6 Raj 612 (DB). (This requirement may be dispensed with only in the case of negotiable instruments in an oriental language where a local usage or custom is established to the contrary.) \* 1958 Punj 222 (226, 228) [AIR V 45 C 60] : ILR (1958) Punj 1178 \* 1925 Mad 132 (133) [AIR V 12] \* 1935 Mad 22 (22) [AIR V 22]. (AIR 1925 Mad 132, *Followed.*)

[7] Last paragraph of S. 35 cannot mean that endorser is liable even without notice of dishonour being given to him by endorsee. 1931 Mad 113 (114) [AIR V 18].

[8] Section 35 is inapplicable to promissory-note payable on demand. 1935 Lah 825 (826) [AIR V 22] (DB) \* 1931 Mad 113 (114) [AIR V 18] \* 1925 Mad 132 (133) [AIR V 12].

[9] Negotiable instrument transferred by mere delivery, transferor is not liable on instrument to subsequent holder — Consequently in case of dishonour he cannot enforce liability on bill against any prior party. 1932 Mad 323 (324) [AIR V 19] (DB).

[10] Liability of endorser arises out of endorsement and not on note—Cause of action

arises only after endorsement. 1925 Mad 132 (132) [AIR V 12] \* 1940 Mad 85 (86) [AIR V 27].

[11] Presentment for payment is needed to make endorser of pro-note payable on demand liable to endorsee. 1931 Mad 113 (115) [AIR V 18].

[12] Where Commission Agent is both payee and endorser of Hundi he is liable to purchaser for amount of hundi, by mercantile usage unless he proves that his name was entered *ben-ami*. (12) 1912 Pun L R No. 166, p. 525 (528) (DB).

[13] Payment guaranteed by endorser of hundi in case of default by drawer — Holder need not sue drawer before suing endorser. 1939 Lah 225 (231) [AIR V 26] (DB).

[14] A giving money to B for investment—B lending money to C on pro-note executed in B's favour—B endorsing note to A and informing that he would come with C and clear debt—B held liable as endorser as well as guarantor. 1939 Mad 848 (849) [AIR V 26] (DB).

[15] The fact of the Bill of Exchange having been dishonoured and of its intimation to the endorser must be proved before the endorser is made liable. 1920 All 248 (248) [AIR V 7] (DB).

[16] A drew a cheque on B Bank in favour of C or bearer and after crossing it generally handed it to C — C endorsing it in blank and giving it to his servant D with direction to pay it in local treasury—D cashed it with E, a banker and disappeared with the money — Suit by B for the money against A, drawer and C, endorser—Held E being a holder in due course was entitled under S. 35 to claim payment from A & C on the drawee's refusal to pay. 1952 All 590 (594) [AIR V 39] : ILR (1951) 2 All 674.

**Section 37 — Note 1**

[1] Maker of pro-note unless otherwise provided is liable to holder as principal debtor and payee as surety and it makes no difference that pro-note is accommodation note. Discharge of payee does not discharge maker. In this English Law differs from Indian Law. 1934 Mad 75 (77, 78) [AIR V 21] : 57 Mad 482 (DB).

[2] Hundi drawn by A in favour of B — B endorsing it in favour of bank — Amount of hundi credited in B's account — Hundi dishonoured — A is liable as principal debtor while B is liable as surety. 1927 Lah 577 (579, 580) [AIR V 14] : 8 Lah 702 (DB).



**38. Prior party a principal in respect of each subsequent party.**

As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

*Illustration*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

**Section 37 — Note 1 (contd.)**

[3] The executants of a pro-note should be regarded as principal debtors under S. 37 in the absence of a contract to the contrary. It is not open to one of the executants to prove, by oral evidence that he was a surety. 1915 Low Bur 103 (103) [AIR V 2] + 1916 Bom 294 (296) [AIR V 3]. (Drawer is entitled to set off from payee for amount due to acceptor from payee.) + 1938 Nag 262 (263) [AIR V 25] : 11 L.R. 1940 Nag 502. (Drawer of hundi is not surety for acceptance.) + 1919 Nag 140 (141) [AIR V 6] : 15 Nag L.R. 128 (Hundi drawn on himself made payable after specified date.)

[But see 1942 Oudh 273 (274) [AIR V 29] : 18 Luck 81 (DB).]

[4] Where a cheque is payable to the bearer, the person to whom payment is made is the holder and being a surety under Ss. 37 and 38, he can be made a party to a suit on it along with the principal person. 1934 Pesh 10 (10) [AIR V 21] + 1934 Lah 10 (11) [AIR V 21] : 35 Cri L. Jour 615 (DB).

[5] Lost or stolen Hundi is ex-hypothesed genuine and liability of Shih who is paid does not rest on guarantee of genuineness. 1914 Bom 260 (262) [AIR V 1] : 39 Bom 513 (DB).

[6] Liability of holder who endorses bill of exchange and passes it on under English Law is only that of surety for drawer and acceptor but he is absolved from any liability to acceptor. 1914 Bom 260 (262) [AIR V 1] : 39 Bom 513 (DB) + '12 17 Ind Cas 951 (951) (Low Bur) (Promissory-note.)

[7] V executed a promissory note in favour of T who endorsed it in favour of P who paid money for which it was executed to V—*Held*, that T was in position of surety, and he received consideration because V was accommodated. 1940 Sind 146 (146, 147) [AIR V 27] (DB).

[8] Defendant promised to pay C or order sixty days after date certain sum under Hundi endorsed to plaintiff, who sued for money. Defendant pleaded that plaintiff was not holder in due course and that the hundi was discharged by subsequent mortgage given by drawee to plaintiff by novation and that defendant who was surety was discharged—*Held*, that plaintiff was holder in due course and that defendant was liable as surety. Section 135 of Contract Act did not apply. '13 21 Ind Cas 222 (223) (DB) (Low Bur).

[9] Where holder has paid consideration, he can recover amount due on pro-note even if it is originally made without consideration. 1935 Oudh 264 (264) [AIR V 22] : 10 Luck 732

+ '13 11 All L. Jour 481 (485) (DB) + 1939 Oudh 107 (108) [AIR V 26] : 14 Luck 438 (DB).

[10] Plaintiff agreeing to advance funds to H on K standing as surety—Arrangement effectuated by H drawing Hundis on his own firm. K being 'rakha'—Hundis endorsed by K in favour of plaintiff—*Held*, that consideration had passed from the plaintiff to H through the instrumentality of K and that K had undertaken the position of a surety or an endorser. This would also be the liability attaching to K in consonance with the principle underlying S. 37. 1956 Raj 129 (133) [AIR V 43 C 40] : 11 L.R. (1956) 6 Raj 612 (DB).

[11] T drew a cheque for certain sum on C Bank in favour of R. M. Firm who had current account with A Bank—Endorsement in blank by one of partners of R. M. firm—A Bank purchased it and credited amount in current account of firm—R. M. firm withdrawing amount of cheque from current account—Subsequent dishonour of cheque by C Bank—A Bank making debit entry in current account of R. M. firm—Suit by A Bank against T and partners of R. M. firm on dishonoured cheque—Right of suit not extinguished by doctrine of merger in view of S. 37 which creates a relationship of principal and surety between T and other parties to cheque. 1951 Pat 621 (623) [AIR V 38 C 177] : 30 Pat 703 (DB).

**Section 38 — Note 1**

[1] Endorser, unless otherwise provided, is liable as principal to his endorsee. '12 17 Ind Cas 951 (951) (Low Bur).

[2] Note payable on demand executed by A in favour of B—B endorsing it in favour of Bank in return of fixed deposit receipt—Suit by Bank on note—*Held*, that liability of B to Bank was not merely that of surety but of principal debtor and consequently, question of liability of maker was immaterial. 1935 Lah 825 (826) [AIR V 22] (DB).

[3] Drawer of hundi is not surety for acceptance—Hundi not accepted—Liability of drawer is as principal debtor under implied contract of indemnity. 1935 Nag 262 (263) [AIR V 25] : 11 L.R. (1940) Nag 502.

[4] Where a cheque is payable to the bearer, the person to whom the payment is made is a holder and thus a surety under Ss. 37 and 38. He can, therefore, be made a party with the principal person. 1934 Pesh 10 (10) [AIR V 21].

**39. Suretyship.**

When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

**40. Discharge of indorser's liability.**

Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

*Illustration*

*A* is the holder of a bill of exchange made payable to the order of *B*, which contains the following indorsements in blank :—

First indorsement, "*B*".

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill *A* puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. *A* is not entitled to recover anything from John Rozario.

**41. Acceptor bound, although, indorsement forged.**

An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

**42. Acceptance of bill drawn in fictitious name.**

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

**43. Negotiable instrument made, etc., without consideration.**

A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

**Section 39 — Note 1**

[1] Section 39 does not by necessary implication abrogate instruments other than bills of exchange dealt with by it. The main principle recognised as part of the law of contracts applies to the other negotiable instruments. Section 39 is a provision inserted ex abundanti cautela. 1934 Mad 75 (79) [AIR V 21] : 57 Mad 482 (DB).

[2] Where the holder of an accommodation note having no notice of its true character at the time of his taking the note but after notice thereof gives time to or releases the payee, he does not thereby discharge the maker even assuming that in the case of an accommodation note the maker is liable as the surety and the payee as the principal debtor; if the holder while releasing the payee reserves his rights against the maker, the maker is not discharged. 1934 Mad 75 (78, 81) [AIR V 21] : 57 Mad 482 (DB).

**Section 40 — Note 1**

[1] Section 40, comes into operation only when the holder of a negotiable instrument destroys the endorser's remedy without the consent of the endorser. 1939 Lah 225 (231) [AIR V 26] (DB).

**SECTION 43 — SYNOPSIS**

1. Scope.
2. "Holder for consideration".
3. "Consideration".

1. Scope. — [1] Section 43 must be read subject to S. 59 in all cases in which the latter applies. 1937 Nag 267 (267) [AIR V 24] : ILR (1937) Nag 159.

[2] On a construction of Ss. 43, 50 and 117, the endorsee of the promissory note executed by *A* in favour of *B* should be entitled to the amount under the promissory note and not the amount which he might have been proved to have actually paid for the endorsement or assignment of the promissory note in his

**Exception I.**—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

**Exception II.**—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

**Section 43 — Note 1 (contd.)**

favour by *B*. 1954 Mad 960 (Pr 2) [AIR V 41 C 335].

[3] Test for liability under the latter part of S. 43 is not the receipt of consideration by the party sought to be bound or made liable, but the payment of consideration by the persons claiming the benefit of that provision—The maker of the instrument, whether with or without consideration is liable to the "holder in due course" or "the holder for consideration", he being a party to the instrument and thus coming within the description "any prior party thereto". (54) I.L.R. (1954) 1 Cal 134 (136). (AIR 1914 Bom 136, 161)

[4] When promisor has not received any consideration for promissory note, negotiable instrument does not create any obligation between the promisee and the promisor. 1938 Cal 315 (315) AIR V 23 (DB)\* 1923 Rang 127 (128) [AIR V 10].

[5] There is no obligation to pay on negotiable instrument if it is accepted or endorsed without consideration. Where the defendant alleges that the plaintiff gave no consideration for the draft, this is a matter which can be proved or disproved by evidence. Proviso to S. 118 (g) must be kept in view when reading S. 120, which creates estoppel against denying the original validity of the instrument. But if fraud can be established no such estoppel arises. 1952 Punj 296 (Prs 4, 5) [AIR V 39] (DB).

2. "Holder for consideration".—[1] Where the holder has paid consideration for the note, he can recover the amount due on it even if it was originally made without consideration. 1935 Oudh 264 (264) [AIR V 22]; 10 Luck 732 \*(13) 11 All L Jour 481 (485) (DB)\* (10) 20 Mad L Jour 144 (145) (DB)\* 1939 Oudh 107 (108) [AIR V 26]; 14 Luck 438 (DB).

[2] Where a pro-note payable to order is transferred by sale deed without any endorsement in favour of the transferee, there is no negotiation within the meaning of S. 14 and the transferee is not a holder within the meaning of S. 43, and he cannot claim the right of a holder for consideration under that section. 1939 All 279 (280) [AIR V 26]; ILR (1939) All 419 (DB)\* 1935 All 1041 (1042) [AIR V 22] (DB).

[3] A person, who becomes the possessor of a cheque without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title, must be presumed to be the holder in due course. 1924 Pat 521 (522) [AIR V 11].

[4] An endorsee from the payee of a hundi is presumed to be a holder in due course until

contrary is proved. 1914 Bom 136 (136) [AIR V 1] (DB).

[5] Cheque drawn by *A* in favour of *B*—Cheque endorsed by *B* to *C* for consideration—Cheque dishonoured on *A*'s instructions on ground that there was failure of consideration undertaken by *B*—*A* held liable to *C* under S. 43. 1949 Assam 6 (Pr 5) [AIR V 58 C 5].

[6] *A*, from London shipping goods to *B* in India under contract and drawing a bill of exchange—Defendant taking delivery and accepting the bill of exchange—Suit by *A* on the bill of exchange—Defence that portion of goods was not to the standard and refused payment—Defendant *held* could not raise plea of partial failure of consideration. 1959 Cal 8 (Prs 13, 16, 17) [AIR V 46 C 2] (DB).

[7] Vendee executing promissory note in favour of plaintiff in consideration of price of property purchased—Decree setting aside sale—Consideration of promissory note fails—Vendee can raise such plea in a suit on the promissory note. 1958 Ker 124 (Pr 3) [AIR V 45 C 48]; ILR (1957) Ker 591.

3. "Consideration".—[1] The proposition that there can be no consideration for a pro-note given in renewal of a former note unless the former is delivered to the maker or cancelled in some way or the other, does not apply to cases where the maker dispenses with delivery or where it is made clear that the parties understand the former note to be extinguished. (36) 40 Cal W N 130 (131).

[2] Pro-note executed in consideration of a certain amount due to the promisee on account of rent but reciting cash consideration—*Held*, that there was good consideration. (39) 41 Pun L R 47 (50).

[3] *C* paying money to *A* whom *B* wanted to be accommodated—*A* passing promissory note to *B*—*B* endorsing it to *C*—Endorsement is for consideration. 1940 Sind 146 (146, 147) [AIR V 27] (DB).

[4] Money given by *A* to *B* for investing on security of immovable property—*B* lending it to *C* instead—Pro-note drawn by *C* in *B*'s name—*B* endorsing same to *A* and informing him that he would come to him with *C* and clear the loan—*Held*, that there was consideration for the endorsement. 1939 Mad 848 (849) [AIR V 26] (DB).

[5] A fixed deposit receipt by a bank is a good consideration for a pro-note in its favour. 1935 Lah 825 (826) [AIR V 22] (DB).

[6] Motor-car given on a hire-purchase agreement—Part payment of initial instalment by cheque—Purchaser discovering defect in car and stopping payment—Car seized by seller—Suit on basis of the

#### 44. Partial absence or failure of money-consideration.

When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

*Explanation.*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

##### Illustration

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

#### Section 43 — Note 3 (contd.)

cheque — *Held*, that owing to the conduct of the seller in seizing the car there was a total failure of consideration. 1933 Lah 470 (471) [AIR V 20].

[7] Promisor agreeing to pay sum to promisee if another does not relinquish his proprietary rights under S. 15 (2), Agra Tenancy Act — Failure to apply for surrender of proprietary rights within time is legal consideration for pro-note. 1937 All 123 (124) [AIR V 24].

[8] If a bill of exchange has been dealt with only to secure the contract price, then the goods shipped for the purpose of completing the contract, vest in the purchaser on payment or tender by him of the contract price. 1916 Bom 144 (146) [AIR V 3] : 41 Bom 566 (DB).

[9] Promisor contending that he was induced to execute pro-note because he thought that security given to promisee by real debtor was sufficient but not contending inducement by promisee is liable under pro-note. 1937 Pat 428 (430) [AIR V 24].

[10] Agreement to abstain from recovery of debt due is good consideration for a promissory note. (1909) 5 Low Bur Rul 192 (194).

#### Section 44 — Note I

[1] Where a person has signed a promise to pay a large amount by reason of getting two benefits one a small cash payment and the other the cancellation of an old note, S. 44 does not apply to such case. 1940 Rang 152 (152) [AIR V 27] (DB).

[2] Hand-note reserving simple interest renewed—Compound interest charged—Renewal for second time and again compound interest charged—There is no failure of consideration to the extent of difference between simple interest and compound interest — S. 44 has no application to such case as the consideration for each renewal being forbearance to sue though not so expressed. 1938 Pat 324 (325) [AIR V 25] (DB).

[3] Suit on pro-note executed in discharge of prior note — Defendant pleading part payment of prior pro-note and asking for credit being given to that amount on ground that there was contemporaneous oral agreement with the second note that accounts should be

looked into in determining their

*Held* that even assuming that the plea of contemporaneous agreement was inadmissible in evidence under S. 92 of the Evidence Act, the plea could be considered as one of partial failure of consideration which could be heard under S. 44 of the Negotiable Instruments Act. 1935 Mad 253 (254) [AIR V 22].

[4] Where a lesser amount than shown in the promissory-note is advanced by the payee, the liability of the maker is under S. 44 proportionately reduced. 1916 All 310 (312) [AIR V 3] (DB).

[5] Promotes executed by junior member of rich family who was not in possession of management of family properties and who was borrowing recklessly under the influence of bad companions—Suit on pro-notes — *Held* that no presumption as to quantum of consideration could be raised and lender was bound to prove by affirmative evidence that full amounts were advanced — If evidence establishes payments of smaller amounts, S. 44 will apply and plaintiff will be entitled to recover only the amounts proved to have been actually advanced. 1935 Mad 769 (774, 775) [AIR V 22] : 58 Mad 841 (DB).

[6] Where a promissory note has been endorsed to a third person, S. 44 cannot be applied so as to prejudice his rights. Where the maker of the promissory note stands in immediate relation to the payee S. 44 would entitle the debtor to relief. (1955) 1955 Andh W R 870 (871).

[7] Where a promissory note is executed for an amount in excess of what was due on the basis of Madras Agriculturists Relief Act, there is failure of consideration in so far as the excess amount is concerned and the plaintiff would not be entitled to more than what would be due to him after applying the provisions of that Act to the original debt and its renewals. 1953 Mad 975 (Pr 4) [AIR V 40 C 385].

[8] Renewal of pronote after commencement of Madras Act 4 of 1938 — Contention that the second promissory note is not supported by consideration to the extent of the excess of the sum that would have been payable under the earlier note if scaled down—*Held* that the debtor could not question the validity of the consideration and could not

**45. Partial failure of consideration not consisting of money.**

Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

**\*[45A. Holder's right to duplicate of lost bill.]**

Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

[a] *Inserted by the Negotiable Instruments Act, 1885 (II of 1885), S. 3.*

## CHAPTER IV OF NEGOTIATION

**46. Delivery.**

The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

**Section 44 — Note 1 (contd.)**

plead failure of consideration and recover the amount so paid since the section applicable is 13 of Madras Act 4 of 1935 and not 8 and 9. (155) 1955-2 Mad L Jour 569 (572).

**Section 45 — Note 1**

[1] Promissory note signed to get one small cash payment and cancellation of old promissory-note, Section 45 does not apply, because the consideration is not "ascertainable in money without collateral enquiry." 1940 Rang 152 (152) [AIR V 27] (DB).

[2] Where a hundi has been drawn for the price of a number of bales and only a part of the bales have been delivered, the consideration for the hundi has failed with reference to all the undelivered bales as against the payee. In a suit on the hundi, the case should be dealt with as if it were for damages for breach of contract and the question as to who broke the contract should be gone into. 1925 Mad 1168 (1169, 1170) [AIR V 12] (DB).

[3] Suit under O. 37, Civil P. C., for recovery of amount due under hundi executed in consideration of plaintiff agreeing to lease his garden upon certain terms — Defendant pleading that due to plaintiff's failure to perform terms of contract he had suffered loss in excess of the amount of hundi — *Held* that the plea amounted to a partial failure of consideration which could not be ascertained in money without collateral inquiry and as such was not a valid defence under S. 45 to a suit on the negotiable instrument. (10) 4 Sind L R 147 (148, 149).

[4] Suit on pro-note executed by defendant for price of trees purchased — Defendant pleading a set-off in respect of some trees cut and removed by third parties claiming adversely to plaintiff — *Held* that S. 45 did not bar the plea though it involved adjudication as to price of trees removed. (38) 1936 Mad W N 188 (189).

**Section 45A — Note 1**

[1] Where a hundi payable at sight, is lost, the holder is not as of right entitled to demand a duplicate under S. 45-A. But a duplicate may be demanded where a bill is lost before or after maturity, as the right to demand duplicate is a part of the mercantile laws of the countries. 1924 Lah 198 (199) [AIR V 11].

**SECTIONS 46-48 — SYNOPSIS**

1. Scope.
2. Interpretation.
3. Delivery.
4. "Delivered conditionally or for special purpose."
5. Endorsement.
6. Assignment.
7. Oral assignment.

1. Scope. — [1] Though the liability in relation to a promissory note or negotiable instrument, attaches by or from delivery and S. 46 provides that as between the parties to an instrument (that means to say, the immediate parties) it may be shown that the instrument was delivered conditionally or for a special

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable<sup>a</sup> to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

[a] As to promissory note payable to bearer see Foot-note (a) under S. 4.

#### 47. Negotiation by delivery.

Subject to the provisions of section 58, a promissory note,<sup>a</sup> bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

*Exception.* — A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

##### *Illustrations*

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

[a] As to promissory note payable to bearer see Foot-note (a) under S. 4.

#### 48. Negotiation by indorsement.

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque <sup>a</sup>[payable to order] is negotiable by the holder by indorsement and delivery thereof.

[a] *Substituted* for the words "payable to the order of a specified person, or to a specified person or order," by the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919), S. 4.

#### Sections 46-48 — Note 1 (*contd.*)

purpose only, and not for the purpose of transferring absolutely the property therein. It may be shown that the instrument was delivered as collateral undertaking given to the creditor, to be enforced only in the event of the debtor failing to discharge some contemporaneous undertaking. There is no difference in substance but only in illustration and application between the provision in S. 46 and proviso 3 to S. 92 of the Evidence Act. 1927 All 292 (293, 294) [A I R V 14] : 49 All 464 (DB).

[2] Property in bill passes to endorsee on delivery actual or constructive under S. 46. It does not pass on mere endorsement. 1924 Bom 205 (206) [A I R V 11].

**2. Interpretation.**—[1] Words "as between such parties and any holder of instrument, other than holder in due course" in S. 46 mean "as between maker and payee or endorser and endorsee or endorsee and any holder, other than holder in due course or as between any one of such parties and any other." 1928 All 289 (292) [A I R V 15] : 50 All 754 (DB).

**3. Delivery.**—[1] A person may sign promissory note or negotiable instrument in his own house and keep it there without incurr-

ing any obligation to any one at all. When such document is tendered to payee and accepted by him, there arises contract between parties. Signature on negotiable instrument becomes necessary because of provisions of S. 4. It is only preparation. It does not amount to offer, and therefore does not become part of the contract. 1939 Bom 461 (463) [A I R V 26] : 1 L R (1939) Bom 651.

[2] Plaintiff sent cheque by ordinary post endorsed in favour of one T, held plaintiff had interest left in him in cheque, until delivery under S. 46. 1926 Bom 262 (263) [A I R V 13] : 50 Bom 118.

[3] Under S. 46 delivery by maker or his authorised agent to beneficiary under note is sufficient to complete transaction evidenced by note — Delivery need not necessarily be to payee. 1939 Mad 858 (859) [A I R V 26].

[4] Endorsement and delivery by only one of payees of promissory note — Endorsement and delivery is ineffectual to operate as negotiation — Other payees can make fresh and valid endorsement, thereafter. 1953 Mad 840 (Pr 3) [A I R V 40 C 323].

[5] Under S. 46 the making of a cheque is complete as soon as it is delivered by the drawer to the payee. The delivery may be actual or constructive. The delivery need not be to the person whose name is written on the

**Sections 46-48 — Note 3 (contd.)**

cheque or even to any agent authorised by the person named as payee. So long as the delivery is made by the person drawing the cheque with the intention of making payment, the property of the drawer in the cheque passes to the payee. 1952 Nag 255 (Pr 9) [AIR V 39] : 1 L R (1949) Nag 620.

**4. "Delivered conditionally or for special purpose."**—[1] Where the plaintiff in whose favour the promote was endorsed knew that consideration for the note had failed and that therefore the defendant had no title to negotiate it in favour of the plaintiff, the plaintiff would have no cause of action against the maker. Section 43 would not apply to such case. (11) 10 Mad L Tim 79 (81) (DB).

[2] Delivery of instrument for specific purpose only—Property does not pass to endorsee. 1936 Pesh 181 (182) [AIR V 23] (DB).

[3] Section 46 of the Negotiable Instruments Act and S. 92 of the Evidence Act should be read together. Section 46 would make an oral contemporaneous agreement rendering liability to pay under a promissory note payable on demand conditional on the happening of an event, binding between the parties to the note and any holder of the instrument other than a holder in due course but not on a holder in due course unless it was proved that he had knowledge of it when the note was endorsed to him. 1951 Cal 55 (Pr 24) [AIR V 38 C 19] : 1 L R (1952) 1 Cal 395 (DB).

[4] If a contemporaneous oral agreement amounts to postponing liability under a promissory note which is payable on demand until the performance of a certain condition, then evidence of such agreement would be admissible under proviso 3 to S. 92, Evidence Act. If on the other hand the agreement only amounts to an arrangement for postponement of the payment, evidence of such an agreement cannot be given as it is in direct conflict with the terms of the note. 1951 Cal 55 (Prs 24, 30) [AIR V 38 C 19] : 1 L R (1952) 1 Cal 395 (DB).

[5] Agreement postponing liability must be proved—It cannot be inferred—S. 92, Evidence Act is not affected—Oral agreement that amount is payable only after accounts have been taken and if something over that amount is found due is inadmissible. 1943 Sind 67 (70, 71, 72) [AIR V 30] : 1 L R (1942) Kar 516 (DB) + 1938 P C 198 (202) [AIR V 25] : 1938 Rang L R 417 : 32 Sind L R 810 + 1930 All 529 (530) [AIR V 17] (DB).

[See 1928 All 289 (290) [AIR V 15] : 50 All 754 (DB) + 1927 All 292 (293, 294) [AIR V 14] : 49 All 464 (DB).]

[But see 1939 Pat 495 (495) [AIR V 26]. (Oral evidence can be adduced to prove agreement suspending the coming into force of contract contained in promissory note.)]

[6] The defendant in a suit on promissory note may show that the promissory note was delivered to the plaintiff conditionally or for a special purpose only. He may prove an oral collateral agreement, not in defeasance of the contract and altering the legal effect of the promissory note, but suspending the effective-

ness of the promote until some condition is fulfilled. 1957 Madh R 90 (Prs 6, 7) [AIR V 44 C 37] (DB). (Suit on promissory note—Oral agreement that promissory note was not to be presented for payment and that amount secured by it was to be adjusted towards payment of outstanding bills, being in defeasance of unconditional undertaking cannot be pleaded in defence—It may afford ground for cross-action.)

[7] Promote could be shown to be given as security. 1928 Mad 1238 (1239) [AIR V 15] (DB).

**5. Endorsement.**—[1] Promissory note payable to order—Delivery without endorsement—Transferee gets no title. 1914 Cal 568 (567) [AIR V 1] (DB).

[2] A promissory note executed in favour of named payee is payable to his order and where it has not been endorsed by payee in favour of holder, such holder cannot recover. 1934 Bom 356 (358) [AIR V 21] (DB).

[3] Promissory note payable to particular person—Nothing to show that transfer of same is prohibited—It is a negotiable instrument payable to order—It is negotiable by endorsement—But the endorsement must be with intention of constituting the endorsee as the holder thereof, accompanied by delivery of the negotiable instrument. 1957 Nag 65 (Prs 30, 32) [AIR V 44 C 21] : 1 L R (1956) Nag 850 (DB).

[4] Mere statement that endorser has received payment from third person followed by his signature is not assignment or endorsement of promissory note. 1936 Mad 417 (419) [AIR V 23].

[5] Where the original debt in respect of which the promissory note was passed is not assigned to the endorsee of the promissory note, endorsee can only sue on the promissory note itself and not the debt. Effect of endorsement is that property in the promissory note is transferred to the endorsee with the right to further negotiation. But the endorser has no title to the debt. 1951 Bom 345 (Pr 2) [AIR V 38 C 74] : 1 L R (1951) Bom 108 (DB).

[6] Where endorsement on promissory note is of ordinary kind and not transferring debt itself endorsee cannot sue non-executant co-payers on ground of their liability under Hindu Law. 1939 Mad 846 (847) [AIR V 26] (DB).

[7] Sale of pro-note in execution of decree—Negotiable Instruments Act not in force where sale took place—Endorsement under O. 21, R. 80 or execution of sale-deed not necessary—Sale becomes absolute under O. 21, R. 77 (2) on payment of purchase money. 1953 Him-Pra 11 (Pr 7) [AIR V 40 C 6].

[8] Where a promissory note is endorsed and delivered by only one of the payees there is no valid endorsement and delivery of the note is ineffectual to operate as negotiation of the note. It is therefore open to the other payee at any time thereafter to make a fresh and valid endorsement and negotiation. 1953 Mad 840 (Pr 3) [AIR V 40 C 323].

**6. Assignment.**—[1] S. 46 provides for only one mode of transfer, that is, by negotiating the instrument by means of endorsement



**49. Conversion of indorsement in blank into indorsement in full.**

The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

**50. Effect of indorsement.**

The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

*Illustrations*

*B.* signs the following indorsements on different negotiable instruments payable to bearer :—

- (a) "Pay the contents to *C* only."
- (b) "Pay *C* for my use."
- (c) "Pay *C* or order for the account of *B.*"
- (d) "The within must be credited to *C.*"

These indorsements exclude the right of further negotiation by *C.*

**Sections 46-48 — Note 6 (contd.)**

and delivery. This does not mean that there is no other method of assignment of a promissory note. There are two other modes of transferring it; and these two other methods are by operation of law, and transfer as a chose in action as contemplated by S. 130 of the Transfer of Property Act. A comparison of S. 130 with S. 137, T. P. Act clearly shows that the transfer of a promissory note by means of writing is not barred. Section 137 saves negotiable instruments from the operation of S. 130. This does not mean that S. 130 cannot be availed of for a transfer of a negotiable instrument, nor does S. 46 of the Negotiable Instruments Act debar a party from resorting to the provisions of S. 130, T. P. Act. While the transfer by negotiation of a document clothes the transferee with certain rights the assignment of it as a chose-in-action under S. 130 is limited to such rights as the transferor had in the document, i.e., the assignee takes only subject to the equities in favour of the maker of the document. Therefore an assignee of a promissory note otherwise than by indorsement such as a transfer by means of writing under S. 130 of the Transfer of Property Act, can file a suit on the promissory note. 1956 Andh 9 (Prs 29, 30, 31) [AIR V 43 C 2] + 1935 Bom 343 (346) [AIR V 22] : 59 Bom 573 + 1933 Mad 133 (133) [AIR V 20] + 1937 Oudh 405 (405, 406) [AIR V 24] : 13 Luck 373 (DB).

[2] Transfer without indorsement or delivery—Transferee would have no better title than his transferor. He would not have rights of 'holder' under this Act. He would be merely in position of transferee of any ordinary chattels. ('12) 16 Cal W N 666 (667) (DB) + 1956 Andh 9 (Pr 31) [AIR V 43 C 2].

[3] Endorsement is not the only means by which negotiable instrument can be transferred. Transfer of promissory-note by means of registered instrument is valid. 1937 Pat 100 (102) [AIR V 24] : 16 Pat 74 (FB).

[4] Transfer of promissory note by endorsement and delivery can be made under formal sale deed. ('43) 1943 All L W 537 (538).

[5] Written assignment of promissory note by a separate document confers on assignee title to sue. 1921 Low Bur 92 (94) [AIR V 8] : 11 Low Bur Rul 174.

[6] Rights and liabilities under a promote cannot be transferred by mere book entries. It must be by assignment or endorsement according to law. 1943 Sind 67 (72) [AIR V 30] : ILR (1942) Kar 516 (DB).

[7] Promote in favour of deceased—Common manager appointed under S. 30, Succession Act, represents estate of deceased and can sue on promote though he is not holder in due course. 1941 Pat 403 (404) [AIR V 28].

**7. Oral assignment.**—[1] Assignment can be oral but it does not confer rights of holder in due course. Assignee has only the rights, title and interest of assignor—Where the endorsee does not claim interest adverse to real beneficiary, oral assignment in his favour may be presumed. 1919 Lah 85 (86) [AIR V 6] : 1919 Pun Re No. 29 (DB).

[2] In Punjab, there can be valid oral assignment of promissory note, as T. P. Act is not in force. 1932 Lah 30 (31) [AIR V 19] + 1936 Lah 547 (548) [AIR V 23] (DB).

[But see 1920 Low Bur 42 (43) [AIR V 7] : 10 Low Bur Rul 96].

**Section 49 — Note 1**

[1] Instrument not addressed to drawee can become bill of exchange if third person endorses acceptance which is not inconsistent with address and acceptor becomes liable under instrument and is estopped from contending that he is not drawee. 1930 Cal 697 (699) [AIR V 17] : 57 Cal 695 (DB).

**Section 50 — Note 1**

[1] Section 50 is not limited to negotiable instruments payable to order. It applies to any negotiable instrument whether it is payable in the first instance to order or to bearer. The illustrations to the section make it clear that endorsements made on instruments pay-



(e) "Pay C".

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

### Section 50—Note 1 (*cont'd.*)

able to bearer can have a restrictive effect upon its negotiability. 1925 Bom 175 (175) [AIR V 12].

[2] The endorsee of a promissory note under S. 50 stands in the shoes of the endorser, unless apt language is used to reserve to himself any specified rights. 1917 Mad 61 (62) [AIR V 4] (DB).

[3] Where the original debt in respect of which the promissory note was passed is not assigned to the endorsee of the promissory note, the endorsee can only sue on the promissory note itself and not on the debt. 1951 Bom 345 (345) [AIR V 38 C 74] : 1 L R (1951) Bom 108 (DB) + 1921 Low Bur 44 (46) [AIR V 8] : 11 Low Bur 137 (DB).

[4] A transferee of a hundi for no consideration has got the rights of the transferor and can sue the maker, but he cannot have the rights of holder in due course. 1933 Lah 1014 (1014) [AIR V 20].

[5] In a suit by the transferee of a promissory note the maker of the note cannot raise the plea that no consideration passed for the transfer in favour of the plaintiff and the plaintiff can recover whatever is payable by the maker to the transferor if the note is not fully supported by consideration. 1932 All 648 (648) [AIR V 19] (DB).

[6] In a suit brought by the endorsee of the payee of a promissory note against the executant, the claim by the payee or his endorsee cannot be questioned by the maker of the promissory note on the ground that the payee was only a benamidar. 1939 Mad 858 (859) [AIR V 26].

[7] In the absence of any rule binding the parties and of any agreement between the parties, the transferee of a pro-note in favour of a bank by its customer is not bound to allow a set-off of an amount due from his transferor. 1942 Mad 30 (31) [AIR V 29].

[8] Pro-note by D in favour of B—On same date by agreement D to pay amount of pro-note by instalments—B indorsing pro-note to P—P held could take advantage of agreement for purposes of limitation. 1944 Mad 57 (58) [AIR V 31].

[9] Endorsee not proved to be holder in due course is entitled only to such rights as endorser under note has. 1957 Mad 438 (439) [AIR V 24] (DB).

[10] Where A issues a cheque in favour of B who endorses it in favour of C who again, in his turn endorses the said cheque in favour of D by an unrestricted endorsement, a suit brought by C against A to recover the amount on the cheque being dishonoured is liable to be dismissed. 1930 Lah 248 (248, 249) [AIR V 17].

[11] Written assignment of promissory note—Assignee gets right to sue upon it—Endorsement on pro-note is not necessary to make

assignment valid. 1937 Oudh 405 (405, 406) [AIR V 24] : 13 Luck 573 (DB).

[12] Where under the terms of an agreement all the assets and liabilities of a concern were transferred the transferee became entitled to the amount due under a promissory note which was in favour of the transferor concern. The title passes by reason of the transfer deed even though the promissory note is not duly endorsed to the transferee by the transferor. 1954 Mad 820 (821, 822) [AIR V 41 C 274].

[13] Promissory note by A to B—Sale of property by A to C—Recital in sale-deed that C agreed to pay note debt—Note endorsed by B to plaintiff—Held plaintiff could not make C liable for note debt as endorsement did not amount to assignment of right under agreement in sale-deed. 1935 Mad 240 (243) [AIR V 22].

[14] Section 50 requires that the restriction or exclusion of the right of further endorsement must be by express words. 1922 Mad 210 (210) [AIR V 9] (DB).

[15] Section 50 which deals with what are known as restrictive endorsements which in express words restrict or exclude the right of the endorsee, cannot be made applicable to cases where the endorsee wishes to satisfy the Court by oral evidence, that he was endorsee for a particular purpose only. 1953 Bom 209 (213) [AIR V 40 C 66].

[16] Where the endorsement is in blank it only operates to transfer the property in the instrument and not as an assignment of debt. An endorsement may operate to assign the debt as well when it is so worded and the requirements of the law with regard to stamping are complied with, but unless there is an endorsement of this nature the endorsee has right merely on the instrument. 1938 Mad 377 (379) [AIR V 25] : 1 L R (1938) Mad 568 (FB).

[17] The endorsee of a promissory note executed by the managing member of a Hindu family is limited to his remedy on the note, unless the endorsement is so worded as to transfer the debt as well and the stamp law is complied with, and, therefore, in the case of an ordinary endorsement, the endorsee cannot sue the non-executant coparceners on the ground of their liability under the Hindu Law. 1938 Mad 377 (379) [AIR V 25] : 1 L R (1938) Mad 568 (FB). (AIR 1917 Mad 61, *Overruled.*) + 1945 Mad 129 (129) [AIR V 32] + 1942 Mad 742 (742) [AIR V 29] + 1942 Mad 161 (165, 166) [AIR V 29] : 1 L R (1942) Mad 204 (DB) + 1940 Mad 174 (174) [AIR V 27] + 1939 Mad 846 (847) [AIR V 26] (DB).

[18] If an endorsee of a promote executed by the manager of a joint Hindu family retransfers the promote in favour of the original creditor, the suit can be filed by the original creditor against both the maker and other members of the family to recover the debt

**Section 50 — Note 1 (contd.)**

from the shares of all the members in the family properties. This principle applies even to a case where, after a decree has been passed in favour of the endorsee, the decree itself is transferred to the original creditor. 1945 Mad 129 (129, 130) [AIR V 32].

[19] The indorsee for collection is in no higher position than an agent and the indorsee can himself sue on the promissory note without getting it re-indorsed in his favour. ('58) 1958-2 Andh W R 279 (280).

[20] An endorsee for collection of a promissory note cannot be given relief against the joint family properties of the sons of the maker. If, however, they are brought on the record as legal representatives of their father on his death pendente lite, a decree can be passed against them payable out of the assets of the father in their hands. 1944 Mad 500 (500, 501) [AIR V 31] ★ 1939 Mad 846 (847) [AIR V 26] (DB).

[But see 1942 Mad 742 (742) [AIR V 29].]

[21] Promissory note endorsed to another person for collection of principal and interest — Endorsee is agent for collecting money and cannot negotiate it to another person unless so authorised by principal. 1940 Mad 27 (27) [AIR V 27].

[22] Even an endorsee of a promissory note for collection only can maintain a suit by himself on the promissory note though he may not be beneficially entitled to the amount due thereunder. 1956 Mad 364 (365) [AIR V 43 C 110] : ILR (1956) Mad 837 (DB).

[23] An indorsement for collection does not, as between the indorser and indorsee, pass the property in the bill to the indorsee though it puts him in a position to make title for a subsequent holder in due course. ('07) 30 Mad 441 (443) (DB).

[24] Although the endorsement of a negotiable instrument and delivery transfers to the endorsee the property therein, yet if the instrument is delivered conditionally or for a specific purpose only, and not for the purpose of transferring property therein, the property does not pass to the endorsee. The endorser may limit the right of the endorsee by express words. Where the endorsement contains no explicit words limiting the rights of the endorsee or is a blank endorsement, it is open to the endorser to lead evidence to show that it was really a conditional endorsement for a specific purpose only, namely, that of collection. 1936 Pesh 181 (182, 183) [AIR V 23] (DB) ★ 1924 Lah 640 (641) [AIR V 11].

[25] Defendant drew a hundi in favour of the plaintiff who endorsed it in favour of third party for collection. The amount not having been collected, the plaintiff sued on the hundi which, however, was not re-endorsed by the endorsee — *Held* that the plaintiff had a right to maintain the suit as the endorsement was conditional and for a specific purpose. ('10) 7 Mad L Tim 271 (272) (DB).

[26] Promissory note drawn by *R* in favour of *M* or to his order — *M* endorsing it and

handing it over to *V* for collection — *M* dying — *V* suing on note — *Held*, that endorsement followed by delivery passed property in it to *V* who, therefore, had right to bring suit. ('10) 5 Low Bur Rul 198 (199).

[27] Where the promisee is party to the suit and the pro-note is in Court there is no merit in the plea that there is no formal proof even of the endorsement of the suit pro-note in favour of the plaintiff. 1950 Trav-Co 11 (11) [AIR V 37 C 7] (DB).

[28] The indorsee of the promissory note executed by *A* in favour of *B* should be entitled to the amount under the promissory note and not the amount which he might have been proved to have actually paid for the indorsement or the assignment of the promissory note in his favour by *B*. 1954 Mad 960 (960) [AIR V 41 C 335].

[29] Promissory note by guardian of Hindu minor for debt binding upon minor's estate — Suit by indorsee lies when indorsement is transfer of debt itself — Fact that it is not stamped does not mean that indorsement does not transfer debt. 1950 Mad 206 (208) [AIR V 37 C 89].

[30] Assessee carrying on business at Bhatinda not then part of British India — Supply of goods to Government of India — Payment made by cheque drawn on Delhi Bank — Cheque received at Bhatinda — Assessee selling cheque to branch of Patiala Bank at Bhatinda and receiving money — Cheque transferred to Patiala under S. 50, Negotiable Instruments Act — Assessee held received payment at Bhatinda — Subsequent receipts at Delhi by the Delhi Branch of Patiala Bank were receipts by the Bank and not by the assessee. 1953 Punj 215 (215) [AIR V 40 C 84] : I L R (1953) Punj 354 (DB).

[31] When an indorser comes again in possession of the negotiable instrument in his own right he is entitled to say so far as the parties antecedent to him are concerned that he never made the indorsement. So far as parties subsequent to him are concerned his liabilities to them are discharged. This may be shown by striking out the subsequent indorsement but the suit is maintainable even if he does not strike out the subsequent endorsements. Striking out of the subsequent endorsements may be necessary in case it is intended that the document is to be negotiated further, but when case is to be brought in a Court of law it is a mere formality. 1959 Raj 84 (85) [AIR V 46 C 27] : I L R (1959) 9 Raj 177.

[32] Subscriber to chit fund executing promissory note for money payable to chit fund by way of future instalments — Promissory note to be deemed as discharged on payment of monthly instalments — Suit by endorsee of pro-note — *Held* promissory note was not by way of security for payment of remaining instalments — Indorsee had the right to enforce promissory note and recover whatever money was payable by the executant. 1960 Mad 314 (315, 316) [AIR V 47 C 103].

**51. Who may negotiate.**

Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

**Explanation.** — Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

*Illustration*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

**52. Indorser who excludes his own liability or makes it conditional.**

The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

*Illustrations*

(a) The indorser of a negotiable instrument signs his name, adding the words—"Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse", he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

**53. Holder deriving title from holder in due course.**

A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

**Section 51 — Note 1**

[1] Promote endorsed to A, B and C — A endorsing it in blank and handing over note to B, and C, for collection from plaintiff — They endorsing in blank, received sum due thereon and handed it to plaintiff — Held that S. 51 has not been contravened. Section prohibits only one of two or more indorsees negotiating note; if endorsement is made by payees or indorsees, requirements of section are satisfied. 1922 Mad 210 (210, 211) [AIR V 9] (DB).

[2] The section does not require that all the payees should endorse at the same time; endorsement on different dates is valid. 1953 Mad 840 (840) [AIR V 40 C 323].

[3] The prima facie presumption is that if a person who indorses a bill of exchange to another, whether for value or for purposes of collection shall come to the possession thereof again, he shall be regarded, unless the contrary appear in evidence, as the bona fide holder and proprietor of such bill and shall be entitled to recover. 1957 Mad 691 (692) [AIR V 44 C 218]; ILR (1958) Mad 1 (DB).

[4] Where under the terms of an agreement in writing, all the assets and liabilities of a concern were transferred, the transferee became entitled to the amount due under a promissory note which was in favour of the transferor concern. The title passes to the transferee by reason of the transfer deed executed by the transferor concern even though the

promissory note was not duly endorsed to the transferee by the transferor. 1954 Mad 820 (821, 822) [AIR V 41 C 274].

[5] Although an endorsement made by one of the two payees in favour of the other payee of a promissory note is invalid, the creditor has a right to get a decree on the ground that the endorsement amounted to an assignment of a chose in action. 1960 Andh Pra 174 (175) [AIR V 47 C 59].

**Section 52 — Note 1**

[1] When an indorsee comes again in possession of the negotiable instrument in his own right he is entitled to say so far as the parties antecedent to him are concerned that he never made the indorsement. So far as the parties subsequent to him are concerned his liabilities to them are discharged. This may be shown by striking out the subsequent indorsement but the suit is maintainable even if he does not strike out the subsequent indorsements. 1959 Raj 84 (85) [AIR V 46 C 27]; ILR (1959) 9 Raj 177.

**Section 53 — Note 1**

[1] A promote executed in favour of the payee or his order is presumed to be for consideration and a transferee from the payee who is the holder in due course acquires the rights of the payee under S. 53 and can maintain an action on the promote against the maker. (1909) 5 Mad L Tim 300 (300).

**54. Instrument indorsed in blank.**

Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

**55. Conversion of indorsement in blank into indorsement in full.**

If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

**56. Indorsement for part of sum due.**

No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

**57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.**

The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

**58. Instrument obtained by unlawful means or for unlawful consideration.**

When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

**Section 56 — Note 1**

[1] Section 56 does not prohibit transfer of balance due under promissory note. It only prohibits transfer of portion only of sum due upon it. 1918 Lah 383 (383) [AIR V 5].

[2] Endorsements of payment may be made on a negotiable instrument and the note then becomes negotiable for the balance due, but if no endorsement is made, the note becomes negotiable for full amount due. If the payee commits fraud by transferring the note for its full value without informing the endorsee that some payments have been made, the person to suffer by the fraud is the person who by his omission to insist on his payment being endorsed on the note enabled the fraud to be committed. 1915 Low Bur 129 (129, 130) [AIR V 2] : 8 Low Bur Rul 202.

[3] Endorsement by one of two payees in favour of the other payee of a promissory note — Endorsement invalid — Section 56 has no application. 1960 Andh Pra 174 (175) [AIR V 47 C 59].

**Section 57 — Note 1**

[1] Section 57 by implication contemplates that the legal representatives of a deceased person can negotiate a promissory note executed in favour of the latter. The practice of allowing legal representatives to sue on notes executed in favour of their predecessors is apparently founded on the principle that the

Act does not abrogate rules of devolution of rights in the properties of the deceased. 1918 Mad 482 (483) [AIR V 5] : 41 Mad 353 (DB).

[2] Succeeding trustee can sue on pronote executed in favour of his predecessor without assignment of indorsement. 1918 Mad 482 (483) [AIR V 5] : 41 Mad 353 (DB).

[3] A pronote was executed in favour of the executor who was subsequently discharged by a decree of Court and the estate vested in the legatee. The pronote was not endorsed by the executor to the legatee who passed it to plaintiff — *Held*, the legatee had not obtained any interest in the pronote which he could transfer to plaintiff, in the absence of an endorsement by the executor. 1923 Mad 593 (594) [AIR V 10] (DB).

**Section 58 — Note 1**

[1] Section 58 does not deal exhaustively with all possible offences that may arise in connexion with obtaining of instrument. Forgery is one of them. 1928 Bom 436 (444) [AIR V 15] : 52 Bom 810 (DB).

[2] No holder of a negotiable instrument, though he may be a holder in due course can acquire a title to the instrument through a forged endorsement. Section 58, Negotiable Instruments Act, which protected a holder in due course where a negotiable instrument has been obtained by means of an offence, does not apply to a case of forgery. 1924 Bom 205

**59. Instrument acquired after dishonour or when overdue.**

The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

**Accommodation note or bill.**

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

**Section 55 — Note 1 (contd.)**

(208) [AIR V 11] + 1928 Bom 436 (439) [AIR V 15] : 52 Bom 810 (DB) + (199) 56 Cal 239 (250) (22 Cal 799 and 24 Bom 65, *Overrule*) + 1923 Sind 54 (56) [AIR V 10] (DB). (Except as regards cases covered by S. 85, title cannot be claimed through forged endorsement.)

[3] Under S. 58 when a negotiable instrument has been obtained from any maker by fraud or for an unlawful consideration, the ordinary presumption that the holder is a holder in due course is rebutted and the case comes under the proviso to S. 118 (g) and the burden of proving that the holder is a holder in due course lies upon the holder. As required by S. 9 the holder, in order to prove that he is a holder in due course has not only to show that he is a holder for value but further he has to show that he became the holder of the instrument before it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. 1928 Mad 1238 (1239) [AIR V 15] (DB) + (199) 56 Cal 239 (250).

[4] Where a draft drawn by a bank payable to A is received by B who indorses it in favour of a firm, signing himself as A, then, as B's act amounts to a forgery no legal title passes to the firm in the draft. And the said firm, in its turn, passes no legal title if it endorses the draft in favour of its bank. For it is well settled that the endorsement on a negotiable instrument through which a holder in due course claims must be genuine and therefore, a forged endorsement creates no title in favour of the holder in due course. 1957 All 104 (105) [AIR V 44 C 24].

[5] A promissory note cannot be said to have been obtained from the holder by means of an offence or fraud within S. 58, by reason of its endorsement being antedated. 1926 Mad 1154 (1155) [AIR V 13].

[6] Defendant executed a promote in favour of P who endorsed it to plaintiff — Endorsement bearing not the true date of endorsement and written merely to avoid application of Madras Act 4 of 1938 — Endorsement held forgery — Though S. 58 does not apply to such a case the endorsement has no legal effect whatsoever — Only person entitled to sue on it is the true owner P and not the plaintiff. 1944 Mad 471 (471, 472) [AIR V 31].

[7] Where the signature of one of the executants of a promissory note is forgery, the addition of forged signature prejudices the

person whose signature has been forged and no action is maintainable on the promote even against the real executant of the note. 1934 Rang 545 (545) [AIR V 21].

[8] Payment to wrong person holding under forged endorsement — Liability to true owner is not discharged — Only exception is where payee's endorsement on cheque payable to order is forged. 1924 Bom 205 (206) [AIR V 11].

[9] A plaintiff who comes to Court with tampered handnotes is not entitled to any decree. 1932 Pat 352 (353) [AIR V 19] : 11 Pat 782 (DB). (AIR 1924 Cal 452 and 53 Cal 812, *Followed*.)

[10] A entrusting B with certain debentures of C company transferable by endorsement for collecting interest — B by forged endorsements in his own favour pledged them with D Bank for securing his indebtedness — D Bank surrendering debentures to C company and obtaining new securities in its place — B transferring his loan account to M Bank and D Bank endorsing new securities to M Bank — Suit by A for delivery and transfer of these new securities against M Bank — *Held* that the issue of new debentures constituted a new contract and M Bank being a holder in due course, A had no right against M Bank. 1932 P C 22 (24) [AIR V 19] : 55 Ind App 433 : 56 Bom 1. (AIR 1928 Bom 407 and AIR 1928 Bom 436, *Affirmed* ; 24 Bom 65, *Overruled*.) + 1953 Bom 209 (211) [AIR V 40 C 66]. (AIR 1932 P C 22, *Followed*.)

[See 1928 Bom 434 (435) [AIR V 15] : 52 Bom 807 (DB).]

[11] Renewal of Government promissory note negotiated by forged endorsement — Real owner suing all subsequent endorsees not pleading conversion — Only the ultimate endorsee obtaining renewal of security from Reserve Bank is liable — Claim does not lie against other endorsees. 1953 Bom 209 (213) [AIR V 40 C 66].

**Section 59 — Note 1**

[1] Where consideration has failed, payee cannot by endorsing promissory note after maturity give any rights to endorsee as against maker 1916 Oudh 233 (234) [AIR V 3] : 18 Oudh Cas 272.

[2] Debtor depositing promissory notes with plaintiff agreeing to pay amount in regular instalments — Debtor agreeing to endorse notes in plaintiff's favour on failure — Suit by plaintiff to recover full amount from

*Illustration*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

**60. Instrument negotiable till payment or satisfaction.**

A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

## CHAPTER V

### OF PRESENTMENT

**61. Presentment for acceptance.**

A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand ac-

**Section 59 — Note 1 (contd.)**

**promisors —** *Held* that after endorsement of promissory notes to plaintiff, plaintiff did not hold notes merely as security but that whole right of action passed to indorsee, and, therefore under proviso to S. 59, plaintiff became entitled to recover amount of note from defendant. 1936 Rang 149 (151) [AIR V 23] : 13 Rang 649 (DB).

[3] Person acquiring hundi after maturity—Suit on hundi—Section 59 applies and drawer can plead that hundi was without consideration and was obtained by misrepresentation—Proviso to S. 59 cannot apply to such case as it applies only to cases of accommodation bills. 1937 Nag 267 (267) [AIR V 24] : ILR (1937) Nag 159.

[4] Where a promissory note payable on demand is negotiated it is not deemed to be overdue for purpose of affecting holder with defects of title of which he had no notice, by reason that reasonable time for presenting it for payment has elapsed since its issue. 1935 Rang 156 (157) [AIR V 22]. (AIR 1921 Cal 302, *Foll.*)

[5] It is only when surety presents hundi for payment within reasonable time and gives notice of dishonor to drawer, he gets into shoes of holder in due course under S. 59. If surety pays amount of dishonoured hundi, he can recover amount from drawer. 1917 Mad 83 (86) [AIR V 4] : 39 Mad 965 (DB).

[6] Where an endorsee of a promissory note is not proved to be a holder in due course, he is entitled only to such rights as the endorser of the note had. 1937 Mad 438 (439) [AIR V 24] (DB).

[7] Where the plaintiff took a stale cheque in good faith for consideration without notice of dishonour and without having any reason to believe that there was any defect in the title of his transferor, who, however, was not a holder for value and the endorsement to him was fictitious—*Held* that the plaintiff could not be regarded as a 'holder' in due course and his claim against the drawer must fail.

Section 59 applies to such a case and the plaintiff only acquires the rights of his transferor. 1928 All 68 (71) [AIR V 15] : 50 All 309 (DB).

[8] *Bona fide* holder for value of pronote payable on demand cannot be affected by any previous demand for payment of which he had no notice. 1928 Mad 1238 (1242) [AIR V 15] (DB).

[9] Pronote payable on demand executed on 29-8-1935 in favour of G—G sending a notice demanding payment by 15-9-1935—On 14-9-1935 G endorsing note to A who brought a suit on the note—A not aware of notice of demand—On 16-9-1935 G received a reply to his notice of demand—Pronote held had matured on date of its transfer to A—Reply sent on 16-9-1935 even if it be assumed to be a notice of dishonour could not affect validity of transfer to A who must be held to be a holder in due course and A's rights were not affected by S. 59. 1938 Mad 911 (913) [AIR V 25].

**Section 60 — Note 1**

[1] Words 'such payment' in S. 60 mean payment at or after maturity. Where a maker of a promissory note payable on demand has, before there being any demand made by the payee, paid the amount without asking for return of the promissory note and the note is endorsed by the payee to a third person without latter's knowledge as to fact of payment, the endorsee is entitled as a holder in due course to sue the maker on the promissory note. 1940 Mad 631 (632, 633) [AIR V 27] : ILR (1940) Mad 382 (DB). (AIR 1933 Mad 300, *Overruled.*) \* 1936 Mad 879 (880) [AIR V 23].

**Section 61 — Note 1**

[1] Foreign bill of exchange — Presentment for acceptance within reasonable time necessary — What constitutes reasonable time is mixed question of law and fact—Drawer con-

ceptance within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

\*[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

[a] *Added* by the Negotiable Instruments Act, 1885 (II of 1885), S. 4.

## 62. Presentment of promissory note for sight.

A promissory note payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

## 63. Drawee's time for deliberation.

The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee "[forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

[a] *Substituted* for "twenty-four", by the Negotiable Instruments (Amendment) Act, 1921 (XII of 1921), S. 2.

## 64. Presentment for payment.

Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

### Section 61 — Note 1 (*contd.*)

tinuing solvent from date of bill to presentment or delay causing no actual damage will not excuse presentment. (1854) 9 Moo P C 46 (65, 66) (PC).

[2] In a bill payable after sight, there are two distinct stages, firstly when it is presented for acceptance and later when it is presented for payment. S. 61 deals with the former and S. 64, with the latter. Presentment for acceptance must always and in every case precede presentment for payment. But when the bill is payable on demand both the stages synchronise and there is only one presentment which is both for acceptance and for payment. 1954 S C 554 (556) [AIR V 41 C 127] : 1955-1 S C R 503.

[3] If a person having no authority to receive payment on behalf of the payee it presents the bill and receives payment there is no valid presentment by him for acceptance. 1954 S C 554 (556) [AIR V 41 C 127] : 1955-1 S C R 503.

[4] *Hundi*—Non-presentment to drawee for payment—Drawer and the drawee are absolved from all liability. 1950 Raj 55 (55) [AIR V 37 C 21].

[5] The stringent or technical rules of the Negotiable Instruments Act with respect to presentment or notice of dishonour cannot be called into operation in determining the liability in the case of hundis which came to

be executed in a territory where there was no such Act in force at the relevant time. 1956 Raj 129 (133) [AIR V 43 C 40] : ILR (1956) 8 Raj 612 (DB).

### Section 63 — Note 1

[1] Section 63 read with S. 83 does not apply to a *Hundi* payable on demand. Under S. 61 it is only a bill payable after sight which requires to be presented to the drawee for acceptance and it is only to such a bill that S. 83 applies. 1923 All 345 (346) [AIR V 10].

## SECTION 64 — SYNOPSIS

1. Scope.
2. Effect of non-presentment.
3. Exception—Specified place.

1. *Scope.* — Section 64 is mandatory and no dishonour can possibly occur unless the instrument is presented for payment by the holder to the drawee as required by the first part of the section. Second part of the section provides the penalty for non-presentment by stating in unequivocal terms that in default of such presentment the other parties thereto are not liable thereon to such holder. 1932 Nag 55 (60) [AIR V 19] : 28 Nag L R 134 (DB).



\*[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

*Exception.* — Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

[a] Added by the Negotiable Instruments Act, 1885 (II of 1885), S. 4.

#### Section 64 — Note 1 (contd.)

[2] Section 64 is undoubtedly ambiguous and in order to get over the apparent contradiction between the section and the exception it is necessary that the section should be given its plain meaning and the exception to it must be read more or less as an independent rule of law and not as controlling the plain language of the section. Hence the non-presentation of the hundis for payment on the due dates does not affect the liability of the maker, acceptor or drawee. 1933 Lah 176 (177) [AIR V 20] (DB) \* 1930 All 648 (650, 651) [AIR V 17] : 52 All 696 (DB).

[But see 1922 All 422 (422, 423) [AIR V 9] (DB). (Suit based on Hundi—Presentment and notice of dishonour must be proved in order to charge the drawer.) \* 1920 Oudh 191 (193) [AIR V 7] : 23 Oudh Cas 364. (Presentment for payment is necessary to charge acceptors of Hundi).]

[3] The rule of presentment for payment by the holder for fixing liability for non-payment on the drawer is subject to well recognised exceptions enumerated in S. 76. 1956 Raj 129 (134) [AIR V 43 C 40] : ILR (1956) 6 Raj 612 (DB).

[4] In a bill payable after sight, there are two distinct stages : firstly when it is presented for acceptance and later when it is presented for payment. Section 61 deals with former and S. 64 with the latter. But when the bill is payable on demand both the stages synchronise and there is only one presentment which is both for acceptance and for payment. 1954 S C 554 (556) [AIR V 41 C 127] : 1955-1 S C R 503.

[5] The section does not deal with the rights between the payee of a cheque and the drawee and does not impliedly recognise the right of the holder of a cheque to enforce his claim against the drawee. 1953 All 637 (640) [AIR V 40 C 318] : ILR (1954) 1 All 268.

[6] Where a promissory note is in the body of it made payable at a particular place it must be presented at that place in order to render the maker liable. In any other case presentment is not necessary to render the maker liable. 1951 Punj 33 (39) [AIR V 38 C 10] (DB) \* (54) ILR (1954) Hyd 776 (781).

[7] By reason of the word "respectively" used in S. 64, the word "maker" has reference to promissory notes, the word "acceptor" to bills of exchange and the word "drawee" to cheques. Hence, where a bill of exchange is drawn by a person on himself no presentment is necessary because there is no acceptor of the bill. 1934 Oudh 254 (254) [AIR V 21].

[8] The rule that where the drawer of a hundi is also the drawee, presentment for payment is unnecessary, does not apply in the case of the endorser of the hundi. 1932 Nag 55 (60) [AIR V 19] : 28 Nag L R 134 (DB).

[9] Promissory note must be presented unless it is not payable at specified place. Presentment is cause of action in suit based upon such instrument. 1938 Lah 799 (800) [AIR V 23].

[See also 1931 Mad 113 (115) [AIR V 18].]

[10] Mere demand for money does not amount to presentment of note; holder must exhibit note and offer to hand it over on receiving payment. 1935 Pesh 132 (133) (DB) \* 1920 Lah 80 (83) [AIR V 7] : 1 Lah 262 (DB) \* 1951 Mad 632 (633) [AIR V 38 C 182]. (Prima facie, the presentment must be made personally and the note has to be produced or the person making the demand must be in possession of the note and in a position to hand it over on payment, especially in the case of on demand promissory note.)

[11] Loss of bill or note does not excuse non-presentment. 1924 Lah 198 (199) [AIR V 11].

[12] Endorsee of bill of exchange cannot recover judgment against drawee without proof of presentment. (13) 19 Ind Cas 251 (252) (DB) (Cal).

[13] Where the endorsee of a promissory note seeks to make the endorser liable the fact of presentment to the maker and issue of notice of dishonour to the endorser should be made clear in the plaint itself as notice of dishonour is a material part of the cause of action. 1951 Mad 632 (634) [AIR V 38 C 182].

[14] Hundis in oriental language executed in territory where Act did not apply—Stringent or technical provisions of Act relating to presentment for payment cannot be called into operation. 1956 Raj 129 (133) [AIR V 43 C 40] : ILR (1956) 6 Raj 612 (DB).

[15] Demand draft through Bank as agent—Delay in presentation by Bank—S. 64 does not apply. 1958 J & K 25 (26) [AIR V 45 C 11].

**2. Effect of non-presentment.**—[1] Under S. 64 the result of non-presentment of hundis for payment is not exemption of the acceptor from liability but the exemption of other parties to the hundis only. The word "other" has been used to show that there is a difference between S. 64 and Ss. 61 and 62 where the words used are "no party." The section therefore means that the parties who are mentioned in the section may be liable but other parties to the documents are not to be liable. 1930 All 648 (649) [AIR V 17] : 52 All 696 (DB).

[See also 1929 Lah 240 (242) [AIR V 16] : 10 Lah 755 (DB). (Promissory note payable at specified place—Maker is liable in spite of non-presentment.)]

[2] Section 64 absolves from liability all parties except the maker of the promissory note, acceptor of bill of exchange and drawee of a cheque. One of the parties so absolved is



**Section 64 — Note 2 (contd.)**

the drawer of the bill of exchange. The principle on which this distinction is based is merely that the maker, acceptor or drawee are the principal debtors, whereas the others are only sureties. On non-presentation of the hundi to the drawee for payment, the drawer is absolved from liability to the holder of the hundi. If the original is lost, it is the holder's duty to present the duplicate of the hundi for payment. The loss of a bill or note does not absolve the party who lost it from making an application for payment when it becomes due and to give notice of dishonour to all parties. On default in presentment, the holder of a hundi is bound to lose his remedy against the drawer as well as the endorser. The holder, therefore, cannot urge the loss as an excuse for non-presentment of the duplicate of the hundi and still claim his remedy against the drawer. 1936 Nag 260 (262) [AIR V 23] : ILR (1939) Nag 601.

[3] The words "other parties" in S. 64 mean parties other than those to whom the instrument is required to be presented for payment under the earlier portion of S. 64. (54) ILR (1954) Madh B 233 (235)\* 1955 Cal 338 (340) [(S) AIR V 42 C 95] (DB). (The other parties in the case of a promissory note will be parties other than the maker, in the case of a bill of exchange, it will be all parties other than the acceptor while in the case of a cheque other parties must be parties other than the drawee.)

[See also (54) ILR (1954) Hyd 776 (781)]  
[But see 1935 Pesh 132 (133) [AIR V 22] (DB). (Words "other parties" do not mean parties other than the maker of the promissory note)\* 1920 Oudh 191 (193) [AIR V 7] : 23 Oudh Cas 364. (The words "other parties" in S. 64 mean parties other than the holder.)]

[4] If a hundi is not presented to the acceptor for payment on due date the drawer is absolved from the liability. (54) ILR (1954) Madh B 233 (235). (AIR 1936 Nag 260; AIR 1930 All 648 and AIR 1929 Lah 290, *loc. cit.*)\* 1950 Raj 55 (56) [AIR V 37 C 21].

[5] Promissory note in favour of B, endorsed in favour of C — Endorsement stating that if amount due is not realised B will himself be liable for the same — Promissory note dishonoured — B is liable notwithstanding absence of presentment and notice of dishonour as the endorsement amounted to a guarantee within S. 76 (b). (54) 1954-2 Mad L Jour 603 (604). ((1821) 106 E R 1153, *loc. cit.*)

[6] Under S. 64 effect of non-presentment of Hundi is that it cannot be made basis of claim against drawer or person signing as surety — But where it has been given as collateral security of book debt and creditor does not make use of it, there is no novation and creditor is not debarred from suing on original cause of action. (13) 1913 Pun L R No. 60, p. 230 (235) : 1913 Pun Re No. 48 (DB).

[7] Where a hundi is not presented for payment and the drawer withdraws the money after many days, the burden of proof lies heavily on the payee to prove that the drawer did not suffer any loss, and the circumstances will be very exceptional in which he could prove that the drawer could not possibly have

suffered any damage and burden is certainly not discharged by the oral admission of the defendant drawer that sometime or other subsequently he got back his money. 1925 All 811 (811) [AIR V 12] (DB).

[8] The payee of a bill of exchange endorsed it to plaintiff and became an insolvent. Plaintiff sued the drawer and the drawee without presenting the bill to the drawee. The drawer had drawn the bill for articles sold to the drawee — Held that no presentment having been made, the drawee was not liable and the onus of proof that the drawer did not suffer damage lay on plaintiff. 1918 All 20 (21) [AIR V 5] : 41 All 40 (DB).

[9] Where the purchaser of a hundi by payment of cash fails to discharge his obligations under the contract represented by the hundi and loses his rights to enforce the hundi he cannot fall back upon his original consideration. 1936 Nag 260 (263) [AIR V 23] : ILR (1939) Nag 601.

[10] Where consequences are provided for as following from the non-presentment, it is not open to the Court to hold that besides the consequences provided for by the law, other consequences, not mentioned by the law, are also to follow. 1930 All 645 (649) [AIR V 17] : 52 All 696 (DB).

**3. Exception—Specified place.**—[1] The exception to S. 64 is really an independent rule of law, and lays down a substantive principle, namely, that in the case of promissory notes payable on demand at a specified place, the note should be presented at that place in order to charge the maker thereof unless the presentment is otherwise executed; but if the note is not payable at a specified place, the presentment of the note is not necessary. 1942 Bom 251 (253) [AIR V 29] : ILR (1942) Bom 620 (DB).

[See also (55) Madh B L J 1955 H C R 197 (200)\* 1951 Hyd 76 (77) [AIR V 38 C 27]. (Promissory note payable on demand on printed form—Word Secunderabad written at the top but no specification of place of payment in body — No question of presentation for payment can arise)\* 1948 Mad 171 (171) [AIR V 35 C 85].]

[2] Where a promissory note is payable at a specified place, the maker cannot be charged thereon until and unless the note is duly presented. 1935 Lah 893 (894) [AIR V 22] : 17 Lah 275 (DB)\* 1937 Lah 259 (262) [AIR V 24] : ILR (1937) Lah 580 (DB)\* 1933 Lah 133 (134) [AIR V 20]\* 1931 Lah 758 (759) [AIR V 16] (DB).

[3] Where the promisor makes a part payment on account of the amount due, presentment of the promissory note payable at a specified place is not necessary. 1933 Lah 133 (134) [AIR V 20].

[4] It is for the parties contesting liability to show that note is payable at specified place in order to render presentment necessary. 1935 Lah 623 (624) [AIR V 22].

[5] Where in a suit on a promissory note payable at a specified place, the plaintiff contains no allegation of presentment, the plaintiff cannot be given an opportunity of proving

**65. Hours for presentment.**

Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

**66. Presentment for payment of instrument payable after date or sight.**

A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

**67. Presentment for payment of promissory note payable by instalments.**

A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

**Section 64 — Note 3 (contd.)**

presentment. 1935 Pesh 132 (133) [AIR V 22] (DB).

[6] For presentment, some quite definite place where holder can attend with reasonable chance of finding maker is necessary — Whether place named is specified place depends on circumstances of each case. 1935 Lah 623 (624) [AIR V 22].

[7] City, town or village at large, may be taken to be specified place within Ss. 64 and 69 but its presentment there would only be necessary, or indeed reasonably possible, if maker has his residence or place of business there. In the absence of such residence or place of business, mere possession of promissory note by maker in city, town or village mentioned, would be sufficient. 1937 Lah 259 (263) [AIR V 24] : I L R (1937) Lah 580 (DB).

[8] A small town which is sufficient to indicate the address of the maker of a pronote is a specified place within the meaning of S. 64. 1936 Pesh 202 (203) [AIR V 23] (DB).

[9] Where the place where a pro-note is made payable is the residential site of a revenue estate where the lender lives, the naming of it is sufficient to make the note only payable at a specified place. It is a matter of common knowledge that negotiable instruments in the Northern part of India are generally made payable at a particular town. 1936 Lah 799 (800) [AIR V 23].

[10] Promissory note payable in Sialkot on demand — Held no presentment was necessary as large town like Sialkot was not specified place for purposes of payment. 1935 Lah 623 (624) [AIR V 22].

[But see 1935 Pesh 132 (132) [AIR V 22] (DB). (Peshwar held to be specified place).]

[11] Where a promissory note is expressed to be payable on a certain date, it must be deemed to have attained maturity on the third day after that date and must be presented at the specified place on that day and that day is the correct starting point of limitation under Art. 80, Limitation Act. 1933 Mad 376 (377, 378) [AIR V 20] (DB).

[12] Where promissory note in favour of firm is payable at specified place and presentment is made after coming into force of S. 69, Partnership Act, S. 64 does not apply. 1935 Lah 893 (894) [AIR V 22] : 17 Lah 275 (DB).

[13] Act has nothing to do with question of jurisdiction in suit on pro-note. Place of presentment for payment does not affect issue of

jurisdiction. 1942 Bom 251 (252) [AIR V 29] : ILR (1942) Bom 620 (DB).

[14] A promissory note payable on demand which does not specify the place of payment does not require presentment under the exception to S. 64 in order to make the maker of the note liable thereon; but if the holder desires payment he must make the presentment under S. 70 or S. 71 of the Act. To put it in another form such note is payable at the place of business or at the usual residence of the maker. Hence the common law rule that the debtor must find the creditor would not apply to such notes. 1954 Madh B 184 (188, 189) [A I R V 41 C 83] : ILR (1954) Madh B 343 (FB).

[See also 1951 Raj 33 (39) [A I R V 38 C 10] (DB).]

**Section 66 — Note 1**

[1] Bill of exchange payable at a specified period after date must be presented for payment at maturity and want of presentment exempts endorser. 1930 All 106 (108) [A I R V 17] (DB).

[2] Hundi payable on date on which it is drawn — Section 66 does not apply — Hundi must be presented within reasonable time. 1938 Lah 183 (184) [A I R V 25] (DB).

[3] No presentation is valid unless it is made after the bill has reached maturity. Presentation before maturity is not valid. 1925 All 442 (442) [A I R V 12] : 47 All 572 (DB).

[4] The presentation on the exact date of the maturity of the Hundi is not necessary when the drawer and the drawee are one and the same person. 1919 Nag 140 (141) [A I R V 6] : 15 Nag L R 128 \* 1927 Lah 72 (73) [AIR V 14] (DB). (It is unnecessary according to S. 76 (d).) \* 1926 Lah 328 (328) [AIR V 13] : 7 Lah 113 (DB). (Do.) \* 1932 Nag 55 (60) [AIR V 19] : 28 Nag L R 134 (DB). (But this does not apply in case of indorser of hundi.)

[5] The rule of presentation for payment is subject to certain exceptions which are enumerated in S. 76. 1956 Raj 129 (134) [AIR V 43 C 40] : I L R (1956) 6 Raj 612 (DB).

[6] A hundi where the maker is the acceptor must be presented for payment in order to render the maker liable. Where the plaintiff sues on the ground that it has been dishonoured, presentation for payment must be pleaded and proved. 1951 Cal 466 (469) [AIR V 38 C 129].

**68. Presentment for payment of instrument payable at specified place and not elsewhere.**

A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

**69. Instrument payable at specified place.**

A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

**Sections 68 and 69 — Note 1**

[1] 'Specified place' includes city, town or village — Presentation of promissory note is necessary if maker has residence or place of business in specified city, town or village. Otherwise mere possession of note is sufficient. 1937 Lah 259 (263) [AIR V 24] : 1 L.R. (1937) Lah 580 (DB).

[But see 1951 Cal 55 (81) [AIR V 38 C 19]; 1 L.R. (1952) 1 Cal 395 (DB). (Specified place does not cover town or city.)]

[2] 'Place' includes "places" — When two places are specified, presentation must be at one or other of those places. 1928 Mad 792 (796) [AIR V 13] (DB).

[3] Words "specified place" in S. 69, mean place that promisee can know where he must present promissory note for payment. Where promissory note is payable at Bombay or Poona or elsewhere it does not make it incumbent upon promisee to present it at any specified place. 1936 Bom 218 (219) [AIR V 23] : 60 Bom 796 (DB).

[4] Note specified to be payable at residential site of revenue estate where lender lived — That is sufficient to make note payable at specified place. 1938 Lah 799 (800) [AIR V 23].

[5] Small town is a specified place. 1936 Pesh 202 (203) [AIR V 23] (DB).

[6] Note payable at Peshawar is payable at specified place. 1935 Pesh 132 (133) [AIR V 22] (DB).

[7] Under S. 69 promissory note made payable at specified place must, in order to charge maker thereof be presented for payment at that place. "Other parties thereto" in S. 64 do not mean parties other than maker. 1935 Pesh 132 (133) [AIR V 22] (DB) + 1937 Lah 259 (262) [AIR V 24] : 1 L.R. (1937) Lah 580 (DB).

[8] Pronote payable at S — Maker residing at K having no place of business at S — Promisee resident all along at S — Possession of pronote by promisee at S is sufficient compliance with S. 69 — Presentation of pronote to maker at S is not necessary. 1937 Lah 892 (893, 894) [AIR V 24] (DB).

[9] Maker of note not residing at place specified in note for presentment — Note in possession of person in whose favour it has been executed — No presentment is necessary under S. 69. 1943 Lah 121 (122) [AIR V 30].

[10] Proper presentation not made to maker of pronote at specified place — Maker is discharged unless no damage is shown to result from non-presentation — It is open to maker to prove that damage was caused to him and that therefore S. 76 (d), cannot be availed of.

1936 Pesh 202 (203, 204) [AIR V 23] (DB) + 1941 Pesh 45 (48) [AIR V 28] (DB).

[11] Note payable at specified place — Plaintiff not alleging presentment — He cannot be allowed to prove it. 1935 Pesh 132 (133) [AIR V 22] (DB).

[12] The words "within the Bank of India", in a promissory note are sufficiently clear and specific and must, therefore, be held to indicate a specified place within the meaning of S. 69. 1955 Bom 419 (424) [S] AIR V 42 C 112.

[13] Section 69 in terms lays down that the instrument must be presented for payment at the specified place. Indubitably this assumes that the party to whom the presentment is to be made will be present at the place specified in the instrument. The specified place in case of the maker of the note would sometimes be where he resides or carries on his business. Where, however, the specified place is other than this, before he can resist liability under the provisions of S. 69 of the Act, it must be shown that the presentment could have been made to him at that place because that is what is obviously contemplated by the section. Otherwise the omission to present will have no effect in the matter. 1955 Bom 419 (424) [S] AIR V 42 C 112.

[14] In view of the provisions of Ss. 64 and 69 of the Negotiable Instruments Act, presentment is necessary to charge the maker of a promissory note payable on demand, only if the note is payable at a specified place. (54) 1 L.R. (1954) Hyd 776 (779).

[15] Where the maker of a promissory note resided at P and the promissory note was not payable at a specified place — Held that presentment for payment was not necessary and the question of the jurisdiction of Court at P did not arise. (54) 1 L.R. (1954) Hyd 776 (781).

[16] When the holder of a promissory note is able to produce and show it to the maker of such instrument and deliver the same to him after receiving payment, he is deemed to have complied with the provisions of S. 69 of the Negotiable Instruments Act for the purposes of presentment. It is not necessary that he should exhibit the instrument and then demand payment. (48) 50 Cal W N 773 (775).

[17] A hundi, where the maker is the acceptor must be presented for payment in order to render the maker liable. Where the plaintiff sues on the ground that it has been dishonoured presentment for payment must be pleaded and proved. 1951 Cal 466 (469) [AIR V 38 C 129].

**70. Presentment where no exclusive place specified.**

A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

**71. Presentment when maker, etc., has no known place of business or residence.**

If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

**72. Presentment of cheque to charge drawer.**

\*[Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

[a] *Inserted by the Negotiable Instruments (Amendment) Act, 1897 (VI of 1897), S. 2.*

**Sections 68 & 69 — Note 1 (contd.)**

[18] Where an address appears at the top of a promissory note payable at a certain place the address does not form part of the contract and the promissory note is not payable at the address mentioned. 1951 Cal 55 (63) [AIR V 38 C 19] : I L R (1952) 1 Cal 395 (DB).

[19] Where a promissory note or bill of exchange is not made payable at a specified place, it should be presented for payment at the usual place of business or at the usual residence of the maker, drawee or acceptor thereof, as the case may be. 1960 Andh Pra 155 (159) [AIR V 47 C 53].

[20] Sections 68, 69 and 70, Negotiable Instruments Act, have nothing to do with the question of jurisdiction in the sense that they do not directly deal with place where the cause of action arises. But when they indicate the proper place at which presentment for payment must be made it is difficult to conceive of any other place for determining the jurisdiction of the Court. 1954 Madh B 184 (188) [AIR V 41 C 83] : I L R (1954) Madh B 343 (FB).

**Section 70 — Note 1**

[1] Rule that debtor must find out creditor does not apply in case of negotiable instrument. 1938 Nag 262 (264) [AIR V 25] : I L R (1940) Nag 502\* 1954 Madh-B 184 (188) [AIR V 41 C 83] : I L R (1954) Madh-B 343 (FB) \* 1953 Hyd 289 (295) [AIR V 40 C 148] : I L R (1953) Hyd 510 (FB) \* 1951 Punj 33 (37) [AIR V 38 C 10] (DB) \* 1942 Bom 251 (255) [AIR V 29] : I L R (1942) Bom 620 (DB). (Pronote executed at A — On demand J, promising to pay to order of J of Bombay Rs. 2500 — No inference as to place of payment held could be made from express terms of note — Suit on pro-note held could not be instituted at Bombay — Fact that J was described as residing at Bombay was not sufficient to found right of payments at Bombay.) \* 1935 Nag 144 (144) [AIR V 22].

[2] No place of payment specified—Place of repayment is where creditor resides — S. 49,

Contract Act does not apply. 1940 Cal 445 (444, 445) [AIR V 27] : I L R (1940) 1 Cal 325.

[3] Not payable on demand — Defendant executing it and handing it over to plaintiff at B — Plaintiff described as resident at M presentation should be at B. 1937 Nag 241 (242) [AIR V 24] : I L R (1938) Nag 301.

[4] Place where payment is to be made not specified — Presumption is that payment is to be made at usual place of business of creditor and cause of action arises at that place. 1939 Lah 18 (19) [AIR V 26] \* 1935 Nag 144 (144) [AIR V 22] \* 1960 Andh Pra 155 (159) [AIR V 47 C 53].

[See also 1954 Madh-B 184 (188) [AIR V 41 C 83] : I L R (1954) Madh-B 343 (FB).]

[5] Pronote was liable to be presented under S. 70 at particular place — Amount due on it need not be payable at that place. 1939 Lah 18 (19) [AIR V 26].

[6] Section 70 deals with the subject of presentment of a promissory note which should be at the place of business of the maker in case it is not covered by S. 68 or 69. In case of a promissory note payable on demand, the note is covered by exception to S. 64 and no presentment would be necessary in order to charge the maker thereof. 1954 Madh-B L J 1955 H C R 197 (200).

[7] Where a promissory note is silent as to where money under it was payable, the creditor is entitled to prove that the note was to be paid at a specified place. 1954 Madh-B 184 (190) [AIR V 41 C 83] : I L R (1954) Madh-B 343 (FB).

[8] Section 70 deals in a general way with the presentment of promissory notes or bills of exchange which are not covered by Ss. 68 and 69 and its applicability is not confined only to those cases where the presentment of the instrument is necessary as a part of the cause of action. 1954 Madh-B 184 (187) [AIR V 41 C 83] : I L R (1954) Madh-B 343 (FB).

**Section 72 — Note 1**

[1] Where a bank collects a cheque as an agent of the holder for the purpose of collection, the proceeds of the cheque are

**73. Presentment of cheque to charge any other person.**

A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

**74. Presentment of instrument payable on demand.**

Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

**75. Presentment by or to agent, representative of deceased, or assignee of insolvent.**

Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

**\*[75A. Excuse for delay in presentment for acceptance or payment.**

Delay in presentment <sup>a</sup>[for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable

**Section 72 — Note 1 (contd.)**

held by the bank as a trustee for the holder of the cheque. 1950 Bom 375 (378) [AIR V 37 C 109].

(2) The obligation to honour a cheque of a customer rests on the branch on which the cheque is drawn and on no other and for this purpose the branch and the head office must be treated as different banks. If the cheque is honoured by the branch and the amount debited to the customer and credited to the head office, the head office must be deemed to have collected the cheque in the sense that they have received the equivalent of money. 1950 Bom 375 (377, 378) [AIR V 37 C 109].

(3) Where cheques issued at Meerut, on a bank at Bombay, were collected by a bank at Bhopal, the receipt field was in British India. 1950 East Punj 347 (352) [AIR V 37 C 80] (DB).

**Section 74 — Note 1**

(1) This section does not appear to cover "cheques" since their presentment is separately dealt with in Ss. 72 and 73.

(2) Loss caused by delay in presenting a draft should be suffered by the person to whom draft is given and not the drawer. 1924 Bom 520 (520) [AIR V 11] (DB).

(3) The question whether a bill is presented within a reasonable time is not purely one of fact but is a mixed question of fact and law. 1929 Lah 577 (577) [AIR V 16] : 11 Lah 34 (DB) + 1920 Lah 413 (413) [AIR V 7] (DB).

(4) Delay in presentment is excusable if it is caused by events beyond control of person making presentment and not imputable to his default, misconduct or negligence. But where delay is unexplained, previous indorsers who are damaged thereby will be absolved from liability to party guilty of delay. (10) 6 Nag L R 33 (36, 38).

(5) Rule as to reasonable time for presentation should not be stringently enforced in case of continuing security. 1917 Cal 154 (155) [AIR V 4] (SB). (Case of letter of guarantee.)

(6) Where a promissory note payable on demand is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. 1921 Cal 302 (303) [AIR V 8] : 47 Cal 861 (DB) + 1935 Rang 156 (157) [AIR V 22].

(7) Where note payable on demand has been indorsed, it not presented for payment within reasonable time of endorsement, endorser is discharged. 1925 Mad 132 (133) [AIR V 12].

(8) Where earnest money was sent to the Diwan of the Travancore Government in the form of a draft though it was not in the approved form of deposit and where the engineer had no authority to accept the draft as earnest money, acceptance of the draft by the engineer did not amount to an acceptance by the State. There was no occasion for the Diwan to accept the draft. So long as the Diwan had not accepted the draft there was no obligation on his part to cash it. Therefore, S. 74 would not apply to this case. 1953 Trav-Co 45 (47) [AIR V 40 C 18] : 11 R (1952) Trav-Co 729 (DB).

(9) *Prima facie*, reading the language of Ss. 64 and 74, the presentment must be made personally and the note has to be produced. If it is shown that demand was made and the person making the demand was in a position to hand it over on payment, it should be sufficient for a presentment for payment especially in the case of on demand promissory note. 1951 Mad 632 (633, 634) [AIR V 38 C 182].

(10) *Held*, in the circumstances of the case that the parties being non-commercial persons and mutually accommodating, a delay of ten months in presenting the promote and a delay of 6 or 7 days in issuing notice of dishonour could not be said to be unreasonable time within the meaning of S. 74 read with S. 105. 1934 Mad 855 (855, 856) [AIR V 41 C 285].

to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.]

- [a] *Inserted* by the Negotiable Instruments (Amendment) Act, 1920 (XXV of 1920), S. 2  
 [b] *Substituted* for the words "for payment", *ibid*, 1921 (XII of 1921), S. 3.

## 76. When presentment unnecessary.

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

- (a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,
  - if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,
  - if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,
  - if the instrument not being payable at any specified place, he cannot after due search be found ;
- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
  - he makes a part payment on account of the amount due on the instrument,
  - or promises to pay the amount due thereon in whole or in part,
  - or otherwise waives his right to take advantage of any default in presentment for payment ;
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

### SECTION 76 — SYNOPSIS

1. Clause (a).
2. Clause (b).
3. Clause (c).
4. Clause (d).

1. Clause (a). — [1] It is for the party contesting liability to show that the note is payable at a specified place, in order to render presentment necessary. 1935 Lah 623 (624) [AIR V 22].

[2] No presentment is necessary where Hundi is lost and a duplicate is not supplied. 1924 Lah 198 (200) [AIR V 11].

[3] Whether place named in pronote for payment constitutes specified place depends on circumstances of each case—Promissory notes payable in Sialkot on demand — *Held* no presentment was necessary as large town like Sialkot was not a specified place for payment. 1935 Lah 623 (624) [AIR V 22].

[4] Where the place where a pronote is made payable is the residential site of a revenue estate where the lender lives, the naming of it is sufficient to make the note only payable at a specified place. Negotiable instruments in the northern part of India are generally made payable at a particular town. 1936 Lah 799 (800) [AIR V 23].

[5] No presentment is necessary where drawee of hundi has no residence or place of business or known address at place where hundi is due and on due date drawee is not

present at such place. 1939 Lah 225 (229, 230) [AIR V 26] (DB).

2. Clause (b). — [1] An endorsement on negotiable instrument by notary public to the effect that "endorsers state, if drawer does not pay, we will pay at the request of the manager" imports promise to pay by the endorser within meaning of S. 76 (b). 1939 Lah 225 (230) [AIR V 26] (DB)\* (54) 1954-2 Mad L Jour 603 (604).

[2] Even parol promise by endorser to pay note is sufficient to constitute an engagement to pay notwithstanding non-presentment. 1925 All 442 (443) [AIR V 12] ; 47 All 572 (DB).

[3] Engagement to pay must have been entered into prior to maturity. 1919 Oudh 16 (18) [AIR V 6] ; 23 Oudh Cas 91.

3. Clause (c). — [1] Promise can be expressed or implied—Creditor informing debtor that limitation is about to expire — Reply by debtor confirming loan amounts to promise to pay within S. 76 (c)—No presentation is necessary. (36) 17 Lah 287 (289, 290) (DB).

[2] A defendant in a suit on a promissory note, who pleads part payment, cannot urge non-presentment of the note as a bar to the suit. 1943 Lah 121 (123) [AIR V 30].

[3] A defendant in a suit on a promissory note who does not contest the suit on the ground that no presentment has been made, waives his right to take advantage of the default in presentment, and the suit cannot therefore be dismissed on that ground. 1943 Lah 121 (123) [AIR V 30].

[4] Pronote payable on demand and at

**77. Liability of banker for negligently dealing with bill presented for payment.**

When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

**Section 76 — Note 3 (contd.)**

specified place—Part payment made—Presentment is not necessary. 1933 Lah 133 (134) [AIR V 20].

[5] Promise to pay need not be expressed so long as it is clearly deducible from the language employed by the parties or their conduct. Where, therefore, the endorser of a hundi unconditionally acknowledge the debt notwithstanding non-presentment but even waive their right to take advantage of non-presentment, no presentment of the hundi is necessary. 1939 Lah 225 (230) [AIR V 26] (DB).

6 Before presentment becomes unnecessary under S. 76 (c), it has to be further established that the drawer at the date of payment had knowledge that there had been no presentment of the Bill. 1955 Cal 338 (341) (S) [AIR V 42 C 95] (DB).

4. Clause (d).—1 Provisions of S. 76 (d) are an exception to general rule that presentment is necessary and burden is on person who claims that his case falls within that exception to prove that drawer could not suffer damage on account of non-presentment. 1919 Oudh 16 (18) [AIR V 6] : 23 Oudh Cas 91 + 1917 All 17 (17) [AIR V 4] : 59 All 364 (DB) + 1936 Lah 799 (800) [AIR V 23]. (A promote must be presented unless it is not payable at a specified place. Presentment is the cause of action in a suit upon such instrument. It is for the plaintiff to prove that the other party suffered no damage from non-presentment of the promote.)

2. Section 76 (d) applies only to bills of exchange and cheques and not to promissory notes. 1937 Lah 259 (260, 261) [AIR V 24] : ILR (1937) Lah 589 (DB) (AIR 1935 Lah 153, *Overrule!*) + 1937 Lah 892 (893) [AIR V 24] (DB).

[But see 1936 Cal 489 (489) [AIR V 23]. (Clause (d) assumed to apply to promote.) + 1936 Lah 799 (800) [AIR V 23] + 1936 Pesh 202 (204) [AIR V 23] (DB).]

[3] Section 76 (d) applies where drawer has no funds with drawee at time bill is being drawn or has no reasonable expectation that drawee will accept for his accommodation. 1922 All 422 (423) [AIR V 9] (DB) + 1935 Lah 413 (413) [AIR V 22].

[4] When drawer and drawee of hundi are the same person no presentation on due date is necessary as drawer cannot suffer damage from want of such presentation. 1922 All 279 (279) [AIR V 9] : 44 All 554 (DB) + 1939 Lah 225 (229) [AIR V 28] (DB) + 1927 Lah 72 (73) [AIR V 14] (DB) + 1934 Oudh 254 (254) [AIR V 21] + 1941 Pesh 45 (48) [AIR V 28] (DB).

[5] Where drawer dishonestly denies payment of consideration and pleads that endorsements were forgeries or made in collusion with payee, he cannot plead that due to want of presentation of the bill to the drawee

he (the drawer) has suffered any damage. In such case holder in due course need not prove that drawer did not suffer any damage due to non-presentment. 1925 Sind 241 (241) [AIR V 12] : 19 Sind L R 12 (DB).

[6] Where the drawer of a hundi payable at sight after a certain period, has settled his accounts with the drawee long before the suit by the payee and has taken back all the money that was due by them to him the drawer does not suffer any damage from the payee's failure to present the hundi for payment on maturity and the case comes within S. 76 (d). The payee is entitled to sue the drawer for the recovery of the amount due on the hundi. 1930 Lah 97 (98) [AIR V 17].

[7] Where in a suit on a promissory note, the executant pleads that payment has been made, the drawer cannot suffer damage from want of presentation of the note as required by S. 74 and therefore no presentation for payment is necessary under S. 76 (d). 1937 Lah 58 (58) [AIR V 24].

[8] Where no hardship is shown in the case of a promote which has not passed into other hands but is still in the hands of the drawer it is not open to the drawer to contend that he would suffer damage for want of presentation especially when drawer admits execution of the note and acknowledges that the money has passed. 1936 Cal 489 (489) [AIR V 23].

[9] Proper presentment not made to maker of hundi at place specified — S. 69 discharges maker unless no damage is shown to result — Maker can prove that damage was caused to him and that S. 76 (d) cannot be availed of. 1941 Pesh 45 (48) [AIR V 28] (DB).

[10] Non-presentment of hundi can be excused if drawer has no fund with drawee at time of drawing the hundi or when it should have been presented or when it is proved that drawer had no reasonable expectation that the drawee would accept the hundi for his accommodation. (54) ILR (1954) Madh B 233 (236).

[11] The burden of proving that the drawer could not possibly suffer any damage lies on the person suing on the Hundi. But such a burden is extremely slight and is easily discharged in a case where the drawer and the drawee are one and the same person. The want of presentment in such a case obviously cannot put the drawer to any loss because he must be deemed to know that the Hundi was executed and a certain date was the due date of payment thereunder and that no payment had been made at maturity. 1936 Raj 129 (134) [AIR V 43 C 40] : ILR (1936) Raj 612 (DB).

**Section 77 — Note 1**

[1] Cheque drawn on branch X of Bank A handed over to Bank B for collection—Cheque



## CHAPTER VI

### OF PAYMENT AND INTEREST

#### 78. To whom payment should be made.

Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

#### Section 77 — Note 1 (contd.)

sent by Bank B to branch Y of Bank A for realization — Amount realized from branch X but amount not realized by Bank B by reason of Bank A going into liquidation—Branch not juridical person — Cheque is dishonoured by Bank A — Only party liable is drawer defendant and not Bank B. 1952 Cal 385 (386) [AIR V 39].

#### Section 78 — Note 1

[1] Hundi payable at sight—Both stages for presentment for acceptance and for payment are rolled up into one — Person entitled to receive payment, therefore, is the person who is entitled to present it for acceptance — Payment must be to holder of instrument—Person having no authority to receive amount on behalf of payee presenting hundi and receiving payment — There is no valid presentment of hundi for acceptance. 1954 S C 554 (Pr 8) [AIR V 41 C 127] : 1955-1 S C R 503.

[2] The section deals with the payee's claim against the drawer and not his right to receive payment from the Bank. No right has been conferred by the section on the payee against the drawee, i. e., the bank. 1953 All 637 (Pr 23) [AIR V 40 C 318] : 1 L R (1954) 1 All 268.

[3] To say that the object of S. 78 is only to secure an effective discharge and not to deal with the right of suit and that the beneficiary can file a suit if he can secure a valid discharge for the debtor is to hold in favour of a proposition sacrificing both the spirit and form of the law on negotiable instruments. 1957 Pat 380 (Prs 2 to 5) [(S) AIR V 44 C 114] : 36 Pat 724 (FB). (AIR 1930 Pat 313; A I R 1932 Pat 346 and A I R 1934 Pat 85, *Overruled*; A I R 1928 Cal 148; A I R 1957 Nag 65 and A I R 1952 All 245 (FB), *Dissented from*.)

[See 1956 Raj 174 (Pr 10) [AIR V 43 C 55] : ILR (1956) 6 Raj 698 (DB). (Section deals with payment in order to act as full discharge. The section does not deal with the right to bring a suit.)]

[4] Reading Ss. 8 and 78 together it is clear that person to whom the payment should be made in order to discharge the maker or acceptor from all liability under the instrument is the holder of the instrument or his accredited agent, such as a banker acting as an agent for collection. The term 'holder' does not include a person who though in possession of the instrument has not the right to recover the amount due thereon from the parties thereto — Thus in order to discharge the maker or acceptor from liability, payment must be made to the payee or the holder of the instrument. 1947 All 52 (53, 54) [AIR V 34 C 28] : ILR (1947) All 311 (DB)\*1957 Nag 65 (Pr 24) [AIR V 44 C 21] : ILR (1956) Nag 850 (DB) \* (10) 8 Mad L Tim 247 (247) (DB).

(Indorsee of negotiable instrument is holder of instrument and payment should be made to him.)

[5] Suit for recovery of amount upon a promissory note, by a person who is not a holder thereof on the ground that the holder is benamidar for him, and he is the beneficial owner, is not maintainable. To say that payment to any one except the holder will not discharge the debt is tantamount to saying that no one can recover the debt from the maker, except the person in whose favour it is made or who is a holder thereof. 1950 Pat 493 (Prs. 1, 5, 13) [A I R V 37 C 126] : 29 Pat 668 (DB)\*1957 Pat 380 (Prs 2 to 5) [(S) AIR V 44 C 114] : 36 Pat 724 (FB). (A I R 1930 Pat 313, A I R 1932 Pat 346 and A I R 1934 Pat 85, *Overruled*; A I R 1928 Cal 148, AIR 1957 Nag 65 and A I R 1952 All 245 (FB), *Dissented from*.)+1955 Pat 451 (Pr 5) [A I R V 42 C 119, (DB). (AIR 1931 Cal 387; A I R 1950 Pat 493 and A I R 1940 Pat 377, *Folio*.) + 1937 Pat 100 (101) [AIR V 24] : 16 Pat 74 (FB). (A I R 1934 Pat 382, *Overruled*.)+1927 All 463 (463) [A I R V 14] : 49 All 457. (In a suit upon a promissory note a Court should not allow evidence to show that the promissory note was not really executed in the plaintiff's favour or evidence that the note had been discharged by payment to the person really interested.)+1932 Lah 620 (621) [A I R V 19] : 14 Lah 19. (The holder of a promissory-note is entitled to realize the debt although the consideration had really come from a firm of which the holder was a member, for the consideration need not come from the promisee.)+1940 Mad 90 (90) [AIR V 27, + 1935 Mad 880 (881, 882) [AIR V 22]. (Where the maker of a promissory-note pays "real" holder he will yet be liable to the person whose name appears in the note.) + 1934 Mad 391 (392) [A I R V 21] + 1944 Nag 325 (326) [AIR V 31] : ILR (1944) Nag 645 + 1932 Nag 23 (24, 25) [A I R V 19] : 27 Nag L R 27. (Consideration not from ostensible payee X but from real owner Y—Promote reciting that it was from X—Promote not payable to bearer nor endorsed to collect — Y cannot sue on promissory note as such.) + (32) 15 Nag L Jour 45 (46) + 1940 Pat 377 (379) [A I R V 27] : 19 Pat 404 (DB)+1939 Pat 347 (348) [A I R V 26]. (The only person who is entitled to sue upon a note is the person whose name appears on the note as payee. Any other person alleged to be entitled to bring a suit must first obtain an endorsement from the payee making such other person the holder in due course.) + 1934 Rang 250 (281) [AIR V 21]. (Since holder of promissory note only who can give valid discharge within meaning of S. 78, one partner cannot sue on promissory note executed in favour of another partner.)

[But see 1928 Cal 148 (151) [AIR V 15] : 55 Cal 551 (DB) + 1930 Sind 4 (8) [A I R V 17].



**Section 78 — Note 1 (contd.)**

[The right of the real owner is not affected by the Act if his real name be disclosed to the maker of the instrument and if the maker does not make any payment to the holder and gets a discharge from him.]

[6] The holder of promissory note alone is entitled to maintain suit for recovery of money due on it. True owner, who is not holder of promissory note, cannot maintain suit even though holder is benamidar and has been made party to suit. 1935 Oudh 278 (281) [AIR V 22]: 10 Luck 705 (DB) + 1947 All 52 (53, 54) [AIR V 54 C 28]: 11 L R (1947) All 311 (DB). (Section 78 does not deal with the right of suit and hence the real owner of the note can sue on the note provided he is in a position to obtain a good discharge from liability from the maker or acceptor of the note.) + 1931 All 108 (109, 110) [AIR V 18]: 53 All 5 (DB). (In a suit brought by the real creditor, to which the debtor and the holder of the promissory note are parties a decree can be passed against the debtor for what is due from him with a clear proviso that payment shall be made by the debtor to the holder or to his credit and that it is made by deposit in Court or if money is recovered from him in execution of the decree, it shall be to the credit of the holder or may be paid to the plaintiff if he secures a discharge of the debtor by the holder of the promissory note. A decree in these terms and payment made in pursuance thereof will satisfy the requirements of S. 78.) + 1941 Cal 187 (389) [AIR V 18]: 58 Cal 752 (DB) + 1935 Mad 312 (313) [AIR V 22 (DB) + 1941 Nag 207 (208) [AIR V 25]: 11 L R (1942) Nag 588. (Section 78 does not deal with a right of suit. The real owner is entitled to sue provided he is in a position to obtain a good discharge for the defendant. The fact that a person not the holder cannot claim the privileges of a holder does not disentitle him from suing.) + 1943 Pat 79 (79) [AIR V 30]. (When a suit on a hand-note is brought not by its ostensible holder but by the real beneficiary who is a minor and the ostensible holder is not only the next friend of the minor plaintiff, but comes on behalf of the plaintiff and deposes that the money due on the hand-note belongs to the plaintiff, the suit is maintainable under S. 78.)

[7] Right to institute suit on negotiable instrument does not vest merely in the holder of the instrument. Although a beneficiary or a true owner may bring such a suit, it is the holder who can give discharge to the maker. Therefore in a suit by beneficiary, the holder must be impleaded, in order to enable the defendant to insist and obtain discharge. The suit without impleading the holder will not be entertained. The decision given in his absence will not be binding on him. But a suit by owner, in which holder is a co-plaintiff stands on different footing. In such a case a suitable decree so as to give a lawful and effective discharge to the maker can be passed. 1956 Raj 174 (Prs 11, 14, 15, 17) [AIR V 43 C 55]: 1 L R (1956) 6 Raj 698 (DB) + 1959 Andh Pra 126 (Pr 8) [AIR V 46 C 59]: 1 L R (1957) Andh Pra 443 (DB). (A advancing sum

to C and taking promote in favour of B — Suit on promote by C and B against C — Contentions of C that C could not sue on promote and was not entitled to any decree — Held that decree could be passed in favour of B who was the holder — Fact that the consideration was not paid by him but passed through a third person A, did not matter.) + 1957 Nag 65 (Prs 48, 49) [AIR V 44 C 21]: 11 L R (1958) Nag 850 (DB). (If the person in whose name the document stands is a party to the litigation (even as a defendant) and does not dispute the plaintiff's right to recover the loan and give a valid discharge, there seems no reason why the suit should not be maintainable and why the decree should not be made in favour of the real owner.)

[8] In the absence of the holder a suit cannot be brought by an undisclosed principal based either on a negotiable instrument or on the original transaction when the same is evidenced and secured by a negotiable instrument. The true position is that a stranger to a negotiable instrument be he the undisclosed principal of the drawer or the payee has, in himself, no position in the eye of law even though the person named in the instrument be his benamidar. 1949 Nag 21 (Prs 14, 15) [AIR V 38 C 14]: 11 L R (1948) Nag 299 (DB). (In certain cases a suit by an undisclosed principal may be maintainable if the holder of the instrument is made a party and gives a valid discharge, provided the suit at the instance of the benamidar be otherwise competent. For example, if the benamidar is a co-plaintiff, the matter is simple. The claim in such a suit is really decreed at his instance though the decree is passed in favour of the other plaintiff. But the same would not be the legal position where the holder is not made a party and is merely called as a witness of the suit. Such a suit would be manifestly incompetent.)

[9] Right of suit on a promissory note vests in the person who can give a valid discharge to its maker or acceptor. It is not essential that the plaintiff, on the face of the instrument, be the payee or the holder or the holder in due course. This right is irrespective of any indorsement in his favour and is recognised on the basis of the vesting of the ownership of the money in the plaintiff in the absence of the holder. Where A, who was the payee and as such the holder of the promissory note when it was executed, lost his status as holder after the partition decree by which these promissory notes were allotted to the shares of his brother B, the right to recover the money due under the promissory note vested in B and the suit by him was maintainable. 1952 All 245 (Prs 3, 14) [AIR V 39]: 1 L R (1952) 2 All 178 (FB). (AIR 1922 All 70, Overruled.)

[10] It has been held that where the holder of the note is a party to the suit but he has not appeared in the suit his conduct in the suit cannot bring about discharge of his maker's liability under the note by raising estoppel against him as the only method of discharge is indicated in S. 78, and there can be no estoppel against the provisions of a statute.

**Section 78 — Note 1 (contd.)**

1937 Cal 753 (754) [AIR V 24] : I L R (1938) 1 Cal 450 (DB).

[11] Under S. 78, payments must be made to the holder but if the holder of the promissory-note elects to treat the payment to his firm as the payment to himself, the payment is a payment to the holder within the meaning of S. 78, and the debtor is discharged from the liability under the promissory-note. 1936 Cal 315 (316) [AIR V 23] (DB).

[12] A payment to any person other than the person mentioned in S. 78 would not give a valid discharge to the promisor unless the payee or the holder (as the case may be) accepts the payment as valid and to himself. Where the payee serves a notice on the promisor before the payment to the third person and shortly afterwards files a suit on the promissory note it cannot be said that the payee has accepted the payment and consequently there is no valid discharge in respect of that payment. 1948 Nag 60 (Pr 13) [AIR V 35 C 21] : I L R (1947) Nag 402 (DB).

[13] When indorsement on promissory-note bears out no accountability between indorser and indorsee it is not indorsement for collection merely and holder alone can sue on note. 1914 Mad 359 (359) [AIR V 1].

[14] Holder of Hundi endorsing the same to another — Hundi dishonoured upon presentation after maturity — Holder paying the endorsee and payment acknowledged by endorsee—Holder getting back the instrument—Property in Hundi reverts to endorser—There is no necessity of re-endorsement — Suit by endorser, who is the holder, on the basis of the instrument is maintainable. 1958 Andh Pra 33 (Prs 6, 8) [AIR V 45 C 9] : ILR (1957) Andh Pra 439 (DB).

[15] Where a holder of a promissory note sells his right, title and interest in the note to another but without indorsing it, the assignee is within the definition of holder in S. 8. He can sue in his own name and he is entitled in his own name to possession and to receive or recover the amount due on the hand-note from the parties thereto. 1934 Cal 549 (549, 550) [AIR V 21] : 61 Cal 425 (DB).

[16] Where under S. 301, Succession Act, a person is appointed the common manager of the estate by an order of the High Court, he for all intents and purposes represents the estate and can file a suit on a promissory note on behalf of the estate, though he is neither the holder thereof nor a holder in due course. An endorsement and delivery is not the only method by which a negotiable instrument can be transferred on the basis of which a suit can be filed. 1941 Pat 403 (404) [AIR V 28].

[17] The coparcenary can be described as the holder of a note if it was made in its collective or business name and therefore in its own name within the meaning of S. 8. Hence the action brought by all the adult coparceners, who are capable in law of giving a satisfactory discharge, to recover the debt on the promissory note executed in their trade name is maintainable. 1940 Bom 164 (167) [AIR V 27] : ILR (1940) Bom 153 (DB).

[18] A coparcener who becomes entitled by survivorship to the joint family property of the family to which he belonged cannot sue on a negotiable instrument payable to the deceased or order ; for he cannot give a valid and proper discharge to the maker, by reason merely of the operation of law. The coparcener does not represent the estate of the deceased member of the joint family. He gets the property by survivorship in his own right and not as a representative of the deceased. 1935 Bom 343 (347) [AIR V 22] : 59 Bom 573 (1939) Sind 144 (145) [AIR V 26] : ILR (1939) Kar 405 (DB).

[19] In the case of a promissory note made payable to two or more persons, the word 'holder' must be taken to apply to all the payees and must not be confined to one who may happen to be in physical possession of it. A joint payee of a promissory note cannot effectively discharge the maker from liability thereunder so as to bar a claim against the maker by the other joint payees. 1937 Rang 227 (229) [AIR V 24] : 1937 Rang L R 1 (FB). [But see (13) 36 Mad 544 (548) (FB). (One of several payees of a negotiable instrument can give a valid discharge of the entire debt without the concurrence of other payees.)]

[20] Where a pronote is executed in favour of two persons and not in favour of the firm of which they were partners, a suit is maintainable on the pronote by two persons. The fact that they have a right to sue on the promissory note in their personal capacity does not prevent them of course from contending that promissory note was executed in discharge of some amount due to firm of which they were partners. 1943 Mad 279 (279, 280) [AIR V 30].

[21] There is no custom relating to Shah Jog hundi which absolves the drawee paying the amount of the hundi to a person having no title, although a Shah, from liability in conversion to the true owner. 1934 Bom 400 (401) [AIR V 21] : 59 Bom 97 (FB).

[22] Promissory note allotted to person by award—Further provision in award that note is to be endorsed and handed over to such person—Award operates as transfer inter alia and such person can sue on note without endorsement. 1935 Mad 473 (474) [AIR V 22].

[23] Transferee of pronote having notice of infirmity of original document is not entitled to decree. 1935 Mad 310 (311) [AIR V 22].

[24] Promissory note signed by A delivered to B—Name of payee left blank—Amount due on note paid by A to B—Thereafter, B in collusion with C, with full knowledge that the promissory note has been discharged inserting C's name in the blank space and completing other instrument—A held not liable upon instrument to C who could not be said to be holder in due course — B's authority as agent to complete the note came to an end, when B paid the amount to A—Insertion of C's name was without authority. 1954 Mad 532 (Prs 2, 3, 4) [AIR V 41 C 198].

[25] Principle of S. 78 will not be a bar to prove benami, if the suit is based on the original consideration and the handnote in question was taken as collateral security or

**79. Interest when rate specified.**

When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

**80. Interest when no rate specified.**

When no rate of interest is specified in the instrument, interest on the amount due thereon shall, "[notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

**Section 78 — Note 1 (contd.)**

payment of the money. 1960 Orissa 172 (Pr 11) [AIR V 47 C 57] : 1960 Cri L Jour 964 (DB).

[28] In India the common law rule that the debtor must seek the creditor is not applicable in the case of promissory notes and in particular those payable on demand. 1951 Punj 33 (Prs 19, 29) [AIR V 38 C 10] (DB)\* 1953 Hyd 289 (Prs 3, 4, 16, 17) [AIR V 40 C 148] : 1 L R (1953) Hyd 510 (FB). (Court has no jurisdiction to entertain suit on negotiable instrument, where the defendant neither resides nor carries on business nor personally works for gain within the jurisdiction, on the ground that the plaintiff resides within the jurisdiction and that there is an obligation on the part of the defendant to have followed his creditor and paid the amount to him there and therefore a part of cause of action arose within such jurisdiction—19 Dec L R 154, 29 Dec L R 630 and AIR 1951 Hyd 132 held obiter and not binding.)

**Section 79 — Note 1**

[1] In the case of a suit based on a negotiable instrument, the Court has to allow the contractual rate of interest (unless it finds that the rate is penal or exorbitant), from the date of the instrument to a date to be fixed by it after the suit. But after that date, the grant of interest is regulated by S. 34, Civil P. C., and not by S. 79. If no date is fixed by the Court then, in view of S. 107 and O. 41, R. 33, Civil P. C., and the fact that the appeal is a rehearing of the suit, it is open to appellate Court to fix any date after the suit up to which the interest at the contractual rate is to be allowed in a suit on the basis of a negotiable instrument. 1960 Punj 257 (Pr 4) [AIR V 47 C 98] (DB).

[2] If there is agreement for payment of interest at fixed rate, or it is payable by usage of trade having force of law or if plaintiff is entitled under provisions of any substantive law such as S. 80, interest may be awarded. 1942 Sind 165 (166) [AIR V 29] : 1 L R (1942) Kar 346 (DB).

[3] Sections 29 (2) and 30, Bengal Money-lenders Act, 1940 prevail over Ss. 79, 80 and 82, Negotiable Instruments Act by virtue of S. 107 (2), Government of India Act, 1944 Cal 196 (198) [AIR V 31] (SB).

[4] Contractual relations between parties in immediate relationship created by Act are affected by Bihar Money-lenders Act, 1938—Sections 7 and 8 of Bihar Money-lenders Act override S. 79, Negotiable Instruments Act to that extent. 1944 Pat 303 (305, 306) [AIR V 31] : 23 Pat 618 (FB).

[5] Section 79 does not exclude jurisdiction of Court to reduce rate of interest specified in negotiable instrument, in exercise of powers conferred upon it by S. 2 (3), Unions Loans Act, 1931 All 662 (662) [AIR V 18] : 53 All 776 (140).

[6] Promote—Interest expressly stipulated—Rate not penal or exorbitant—Interest cannot be disallowed until realization—Stipulated rate up to decree and then 6 per cent held satisfied. 1934 Lah 32 (33) [AIR V 21] (DB)\* (12) 17 Ind Cas 309 (310) (Oudh)\* (11) 11 Ind Cas 591 (591) (Low Bur) (Payment of interest by instalments may be ordered)\* 1920 Pat 157 (158) [AIR V 7] : 5 Pat L Jour 536 (DB). (Court cannot go behind stipulations in promote.)

[7] Where a promissory note mentions specific rate of interest evidence is not admissible to prove an agreement to pay a different rate of interest. No question of awarding interest by way of damages can arise. 1941 Nag 271 (273) [AIR V 28] : 1 L R (1942) Nag 498.

[8] Where loan is evidenced by insufficiently stamped promote plaintiff though entitled to decree for principal sum of money advanced, is not entitled to interest at rate stipulated in promote and where notices sent to defendants do not contain any demand that interest would be claimed from date of such demand until time of payment, plaintiff is not entitled to any interest under Interest Act, 1933 Oudh 259 (260) [AIR V 20] (DB).

**Section 80 — Note 1**

[1] Once document is held to be not promissory note, provisions of S. 80 do not apply and interest could not be claimed accordingly. 1932 Lah 616 (618) [AIR V 19] : 13 Lah 516 (DB)\* 1927 All 444 (445) [AIR V 14] (DB). (Document held to be mere acknowledgment)\* 1943 Nag 99 (100) [AIR V 30] : 1 L R (1943) Nag 149 : 44 Cri L Jour 782 (FB). (Shahjog hundis are not negotiable instruments.)

*Explanation.* — When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

[a] *Substituted for the words and figures "except in cases provided for by the Code of Civil Procedure, section 532", by the Negotiable Instruments (Interest) Act, 1926 (XXX of 1926), S. 2.*

#### Section 80 — Note 1 (contd.)

[But see ('11) 1911 Pun L R No. 165, p. 611 (616) : 1911 Pun Re No. 52 (DB). (Interest at 6 p. c. will be allowed on *Shah Jog Hundi* when no rate is mentioned).]

[2] Operation of S. 80 is not excluded by O. 37, R. 2, Civil P. C. That rule makes S. 79 or S. 80 of Negotiable Instruments Act specifically applicable to case filed under O. 37, Civil P. C. 1933 Mad 299 (300) [AIR V 20] : 56 Mad 398 (DB).

[3] Section 80 governs alike cases in which interest but no rate of interest is mentioned in instrument and those in which interest is not mentioned at all. 1935 Oudh 518 (519) [A I R V 22] : 11 Luck 420 (DB).

[4] Under S. 80, when rate of interest is not specified, interest cannot be allowed at more than 6 per cent., per annum. 1932 Lah 30 (31) [AIR V 19] \* 1936 All 160 (163) [A I R V 23] : 58 All 382 (DB). (Notwithstanding any contract to contrary — Interest payable is from date when principal ought to be paid.) \* 1931 Cal 140 (141) [AIR V 18] : 58 Cal 290 \* 1928 Lah 665 (666) [AIR V 15]. (Interest can be awarded from date of note.) \* ('11) 1911 Pun L R No. 113, p. 433 (434). (From date of execution.) \* 1933 Mad 299 (300) [AIR V 20] : 56 Mad 398 (DB) \* 1922 Oudh 122 (2) (123) [AIR V 9] : 25 Oudh Cas 69 \* 1937 Pat 319 (320) [AIR V 24] (DB). (Hundi not mentioning interest — Selling of such hundi by payee with endorsement undertaking to pay interest — Vendee, entitled to interest from payee under hundi from due date till date of realization.) \* 1917 Pat 533 (534) [A I R V 4] : 2 Pat L Jour 451 (DB). (From date when money ought to have been paid.) \* ('21) 63 Ind Cas 296 (297) (DB) (Pat).

[5] "The same" refers to amount due on instrument not interest on that amount — Promissory note payable on demand — Interest is due from date of execution. 1935 Oudh 518 (520) [A I R V 22] : 11 Luck 420 (DB) \* 1936 All 160 (163) [A I R V 23] : 58 All 382 (DB) \* 1935 All 451 (451) [AIR V 22]. (From date of execution of promissory note.) \* 1942 Bom 15 (16) [AIR V 29] : 1 L R (1942) Bom 101. (Interest runs from due dates of bills.) \* 1928 Bom 35 (42) [A I R V 15] : 52 Bom 88 (FB) \* 1926 Bom 241 (242) [AIR V 13] : 50 Bom 266 (DB) \* 1928 Lah 665 (666) [A I R V 15]. (From date of execution of promissory note.) \* ('11) 1911 Pun L R No. 113, p. 433 (434) \* 1919 Nag 87 (88) [A I R V 6]. (Promissory note — Interest is to be calculated from date on which consideration ought to have been paid.) \* 1937 Oudh 9 (10) [AIR V 24] \* 1917 Pat 533 (534) [A I R V 4] : 2 Pat L Jour 451 (DB).

[But see 1931 Cal 140 (144) [AIR V 18] : 58 Cal 290. (Phrase "Date at which same ought to have been paid" relates to "interest" due thereon. Interest is payable from date of execution, or from maturity or from presentation or from demand or from service of sum-

mons according to circumstances of each case. When no demand is made prior to suit, interest is payable from date of service of summons.)]

[6] Hand-note payable on demand — No interest mentioned — No demand made before suit — Interest is payable from date of summons. 1959 Orissa 204 (207) [A I R V 48 C 58] : ILR (1959) Cut 286. (AIR 1936 All 160, AIR 1928 Lah 665, A I R 1935 All 451, A I R 1917 Pat 533 and A I R 1928 Bom 35, *Not followed*.)

[7] In the case of a promissory note payable on demand interest is to be calculated from the date of the demand. Where no demand was made, it is to be calculated from the date of the suit. 1955 Ajmer 13 (14) [A I R V 42 C 15].

[8] Section 80 itself does not say anything as regards the date from which interest will be allowed except that this should be the date at which interest ought to have been paid. When the amount itself is payable on demand there can be no question of interest becoming payable before that date. Where however the amount is payable under the instrument on the expiry of a certain period of time, the amount becomes payable at once so that where the amount is not being paid, it seems proper to allow interest by way of damages. 1955 Cal 338 (341) [S] AIR V 42 C 95] (DB).

[9] Statutory liability imposed by S. 80 to pay interest is enforceable despite absence of agreement to pay interest. 1919 Nag 87 (88) [AIR V 6] \* ('09) 6 All L Jour 233 (235) (DB).

[But see 1932 Lah 582 (583) [A I R V 19] : 13 Lah 800 (DB). (It is permissible by virtue of S. 1 in the case of hundi to set up and prove usage for payment of interest at rate exceeding 6 per cent per annum.) \* ('07) 29 All 33 (36) : 34 Ind App 6 (PC). (Case before amendment — S. 80 confers right to interest, but does not take it away when otherwise existing — Hundi silent as to interest — Collateral written agreement in accordance with local custom — Interest can be awarded at that rate — S. 80 does not apply.) \* 1915 Nag 130 (131) [AIR V 2] : 12 Nag L R 9. (Case before amendment — Simultaneous separate agreement is valid.) \* 1920 Pat 157 (158) [A I R V 7] : 5 Pat L Jour 538 (DB). (Case before amendment — Subsequent agreement.) \* 1916 Pat 406 (406) A I R V 3] : 1 Pat L Jour 71. (Case before amendment — Oral evidence to prove contemporaneous agreement is inadmissible.)]

[10] Interest on pronote — Creditor is entitled to same even though there is no evidence as to the agreement to pay interest. 1955 Ajmer 13 (14) [AIR V 42 C 15].

[11] No secondary evidence of unstamped written agreement to pay interest at certain rate is allowed. In such case interest at 6 per cent. should be allowed. 1920 Nag 131 (132) [AIR V 7] : 16 Nag L R 68.

**81. Delivery of instrument on payment, or indemnity in case of loss.**

Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

**CHAPTER VII****OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES****82. Discharge from liability — (a) by cancellation; (b) by release; (c) by payment.**

The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

- (a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;
- (b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;
- (c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

**Section 80 — Note 1 *Contd.***

[12] Promise to pay interest cannot be proved apart from promote. 1934 Lah 606 (607) (AIR V 21) (DB).

[13] No evidence is permitted to be given of a contemporaneous agreement to pay interest on the sum of the promote, indicated by an endorsement on the back of the promote in the handwriting of the debtor that he has paid a certain amount towards interest. 1955 Amer 13 (14) (AIR V 42 C 15).

[14] Where a Hundi executed in Calcutta in favour of a person in Marwar at a time when the Negotiable Instruments Act was not in force in Marwar on the date of suit was silent as to the rate of interest, no interest can be claimed up to the date of the suit but interest pendente lite and future interest at the rate of 6 per cent per annum can be awarded by the Court under its discretion. 1951 Raj 64 (66) (AIR V 38 C 25) (DB).

**Section 81 — Note 1**

[1] The normal rule is that the document on which the suit is based should be produced along with the plaint. The possibility of risk is greater in the case of negotiable instruments which may change hands frequently by successive endorsements. Possession of the instrument by the holder in due course will be *prima facie* evidence of the liability not having been discharged. 1958 Ker 124 (124) (AIR V 45 C 48) : ILR (1957) Ker 853.

[2] Assignment of promissory note — Payment made by maker to promisee after assignment not endorsed on promissory note—Maker not having note delivered back to him on payment nor obtaining indemnity against any further claim thereon against him — Payment cannot be pleaded by maker in defence to suit by assignee on promissory note against him

and promisee — Maker's ultimate remedy is only against promisee. 1948 Mad 171 (172) (AIR V 35 C 85).

[3] In the case of negotiable instruments the Negotiable Instruments Act itself gives indication that the rule that the debtor should seek the creditor would not be applicable because of the provisions contained in Ss. 88, 89, 70, 78 and 81. 1951 Punj 33 (42) (AIR V 38 C 10) (DB) + 1953 Hyd 289 (295) (AIR V 40 C 148) : ILR (1953) Hyd 510 (FBI).

**SECTION 82 — SYNOPSIS**

1. Cancellation.
2. Release.
3. Payment.
4. Conditional discharge.
5. Joint promisees — Discharge by one — Validity. — See S. 78 and also Ss. 38 and 45 of the Contract Act, 1872.

1. Cancellation. — [1] When on due date acceptor asks for further time, and holder gives him further time, bill is not cancelled nor liability of acceptor discharged. 1927 Bom 13 (14, 15) (AIR V 14) : 50 Bom 650 (DB).

2. Release. — [1] Fresh agreement between drawer and holder for value of bill of exchange does not release acceptor of first bill from liability. 1927 All 236 (330, 237) (AIR V 14) : 49 All 257 (DB).

3. Payment. — [1] Section 82, does not contemplate payment by one of the executors of promissory note of part of principal sum. 1937 Rang 521 (522) (AIR V 24).

[2] Payment to endorsee's agent and received by him in his capacity as an agent effects discharge. 1929 Lah 634 (635) (AIR V 16) (DB).

**83. Discharge by allowing drawee more than forty-eight hours to accept.**

If the holder of a bill of exchange allows the drawee more than <sup>a</sup>[forty-eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

[a] *Substituted for "twenty-four" by the Negotiable Instruments (Amendment) Act, 1921 (XII of 1921), S. 2.*

**Section 82 — Note 3 (contd.)**

[3] Where a negotiable instrument has been negotiated with a third party and while it is outstanding in the hands of that third party, it cannot be said that the original debt is still outstanding and unpaid. 1942 Cal 45 (46) [AIR V 29] : ILR (1941) 2 Cal 103.

[4] Where admittedly a case does not fall under S. 82 (c) a discharge can be given under S. 78 to the maker of the promissory note only when a payment is made to the holder thereof. 1957 Pat 380 (381) [(S) AIR V 44 C 114] : 38 Pat 724 (FB).

[5] When a draft is issued by a bank payable on its branch at some other place or on some other bank, a debit entry made in the accounts of the issuing bank in advance in anticipation of the fact that the bank draft would be cashed and payment made to the holder at the bank on which it is issued does not necessarily amount to payment unless the facts show that the payment has been actually made or other liabilities incurred by the bank in respect of the draft so as to preclude the holder of the draft from recovering the amount. 1957 Assam 133 (137) [(S) AIR V 44 C 34] (DB).

[6] Section 82 (c) can apply only to a negotiable instrument and cannot apply to a payment and discharge in the case of a telegraphic transfer. (60) 1960-1 Mad L Jour 187 (193) (DB).

**4. Conditional discharge.** — [1] A promissory note may be discharged by a fresh note. 1919 Low Bur 69 (71) [AIR V 6] : 10 Low Bur Rul 4. (A, B, C and D executed a pronote in favour of K—K later on accepting a fresh note from A, B and C in renewal of the original — Decree on basis of fresh note obtained against A, B and C—Subsequent suit against D on original note is not maintainable.)

[2] The established rule is that a bill of exchange or hundi given for a debt operates only as a conditional discharge of debt although it might be proved that in any particular case it was taken unconditionally in satisfaction of a debt. The execution of a formal receipt for the amount carried by a bill of exchange is not sufficient to rebut the general presumption of the discharge being only conditional. (11) 21 Mad L Jour 432 (433) (DB) \* 1923 Lah 396 (397) [AIR V 10] : 4 Lah 151 (DB) \* 1930 Mad 874 (878) [AIR V 17] : 53 Mad 828 (DB).

[3] An endorsement of receipt on a pronote operates only as a conditional discharge of the debt. (11) 21 Mad L Jour 432 (433) (DB) \* 1917 Mad 886 (887) [AIR V 4].

[4] *Samble.*—The issue of the cheque is a conditional payment and if the cheque remains unpaid, the original debt revives. 1957 Cal 585 (587) [(S) AIR V 44 C 153].

[5] Where it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand. A cheque, unless dishonoured, is payment. The payment takes effect from the delivery of the cheque but is defeated by the happening of the condition, i. e., non-payment at maturity. 1954 S C 429 (433) [AIR V 41 C 104] : 1955-1 SCR 185.

[6] A demand draft is as much a conditional payment as a cheque or any other bill of exchange and it all depends upon the circumstances whether actually the issue of the demand draft satisfied the liability. Thus where a demand draft was issued by the Bank on its own branch as a conditional payment to cover the cheques issued by the defendant on the said Bank and when in fact the demand draft could not be cashed, the defendant cannot contend that nevertheless the plaintiff obtained satisfaction of the amount covered by the cheques issued by the defendant. 1959 Assam 162 (165) [AIR V 46 C 34] (DB).

[7] Where a bill of exchange or a promissory note is given by a debtor to a creditor in satisfaction of his dues, it is presumed to be a conditional payment and in case the creditor is unable to obtain satisfaction, he may fall back on the original debt. 1957 Assam 133 (135) [(S) AIR V 44 C 34] (DB).

[8] Bank purchasing order cheque from customer and crediting its amount to customer's account — Customer allowed to withdraw amount before clearance — Subsequent dishonour of cheque — Bank debiting customer with amount of cheque — Suit by bank for recovery of amount of disputed cheque — *Held*, mere fact that Bank made debit entry did not extinguish right of suit on dishonoured cheque by discharge of liability under S. 82. 1951 Pat 621 (624) [AIR V 38 C 177] : 30 Pat 705 (DB).

[9] Pronote executed for debt due on accounts — Debt shown as bad debt — Debtor is not discharged. 1950 Kutch 24 (27) [AIR V 37 C 20].

**5. Joint promisees—Discharge by one—Validity.** — See S. 78 and also Ss. 38 and 45 of the Contract Act, 1872.

**Section 83 — Note 1**

[1] Per *Reid C. J.* — Words 'all previous parties' in S. 83 include drawer. (11) 1911 Pun L R No. 142, p. 525 (531) : 1911 Pun Re No. 39 (DB). (Per *Kensington J.*—"All previous parties" do not include drawer).

[2] Section 83 does not apply to a hundi payable on demand inasmuch as the only presentment necessary in the case of a bill

**\*[84. When cheque not duly presented and drawer damaged thereby.**

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

*Illustrations*

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

[a] Substituted for the original section by the Negotiable Instruments (Amendment) Act, 1897 (VI of 1897), S. 5.

**85. Cheque payable to order.**

[(1)] Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

**Section 53 — Note 1 (contd.)**

payable on demand is presentment for payment and not presentment for acceptance. 1923 All 345 (346) [AIR V 10, \* 1918 Oudh 314 (316) [AIR V 5]. Holders of hundis for valuable consideration are entitled to return of consideration money paid by them to their endors if hundis subsequently turn out to be worthless. \* 1937 Pesh 103 (106) [AIR V 24] (DB) \* 1918 Oudh 309 (309) [AIR V 5].

**Section 54 — Note 1**

[1] Debtor sending *Havala* to creditor to be presented to debtor's debtor and get payment—Creditor not presenting it due to his own laches—Debtor's debtor becoming insolvent—*Held* that *Havala* operated as satisfaction of debt and creditor could not be allowed to recover amount by suit. 1936 Rang 164 (165, 166) [AIR V 25] (DB).

[2] The provisions of S. 84 cannot be extended to negotiable instruments other than cheques. Even if the principles underlying S. 84 could be applied to negotiable instruments generally, they certainly cannot be applied to a demand draft by one branch of the bank on its another branch. A draft drawn by one branch of a bank on another branch thereof is not a negotiable instrument at all. 1959 Bom 267 (268) [AIR V 48 C 81 : ILR (1958) Bom 1386].

[3] A drawer of a cheque who wants to take advantage of S. 84 must prove two factors : (i) that he had sufficient money in deposit in the Bank in his account to honour the cheques, and (ii) that he had suffered actual damage on account of non-presentment of the

cheque within a reasonable time. 1954 Orissa 124 (126) [AIR V 41 C 36] : ILR (1954) Cut 46 (DB).

[4] A demand draft, which is very nearly allied to a cheque, should be presented for payment as early as possible, because delay in presentation in commercial practice might lead to complications and cause some loss or damage to the parties concerned. However, in this respect, cl. (2) of S. 84, N. 1 Act, makes it clear that in determining what is a reasonable time, regard should be had to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case. 1957 Assam 133 (138) [(S) AIR V 44 C 34] (DB).

[5] The payee's right to receive payment from the bank conferred by S. 84 can be exercised only in the circumstances mentioned therein. The section does not recognise the payee's right in general to receive payment from the bank. 1953 All 637 (640) [AIR V 40 C 318] : ILR (1954) 1 All 268.

[6] A cheque is a negotiable instrument and the payee is the holder in due course. If the payee presents the cheque to the bank beyond reasonable time the liability of the drawer stands discharged. The payee becomes then a creditor of the bank in respect of the amount of the cheque under S. 84 (3) and can claim set off in respect of the amount. 1960 Assam 191 (203) [AIR V 47 C 47] (DB).

**Section 85 — Note 1**

[1] Under S. 85 protection is given to drawee and also drawer. 1926 Bom 262 (265) [AIR V 13] : 50 Bom 118.



<sup>b</sup>[(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.]

[a] Section 85 was re-numbered as sub-section (1) thereof by the Negotiable Instruments (Amendment) Act, 1934 (XVII of 1934), S. 2. [b] *Inserted, ibid.*

**\*[85A. Drafts drawn by one branch of a bank on another payable to order.**

Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

[a] *Inserted by the Negotiable Instruments (Amendment) Act, 1930 (XXV of 1930), S. 2.*

**86. Parties not consenting discharged by qualified or limited acceptance.**

If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not

**Section 85 — Note 1 (contd.)**

[2] Payment made by drawee upon post-dated cheque even after receiving and acknowledging instructions from drawer countermanding his order, is not made "without negligence and not made in due course" so as to discharge drawee. 1941 Cal 110 (111) [AIR V 28] : ILR (1940) 2 Cal 578.

[3] Cheque describing payee as official liquidator—Bank making payment direct to liquidator and not through his bank as prescribed by S. 244-A, Companies Act and R. 66, Madras High Court Rules under Companies Act—Money misappropriated by liquidator—Bank acts negligently and payment is not made in due course—Section 85 does not help it. 1945 Mad 30 (31, 32) [AIR V 32] : ILR (1945) Mad 328 (DB).

[4] Bank paying money on forged cheque—Section 85 does not protect it—Money cannot be debited to customer merely because of his negligence in allowing his cheque book to remain unlocked. 1938 All 374 (375) [AIR V 25] : ILR (1938) All 634.

[5] Forgery of drawer's signature — Negligence of drawer — Money cashed on cheque stolen and forged—Owner of cheque book is not liable for loss in absence of gross negligence—In order to make him liable for negligence, neglect must be intimately connected with transaction itself and be proximate cause of loss. 1924 Rang 264 (265) [AIR V 11] (DB).

[6] A had several accounts with bank B. The parties had an agreement to extend overdraft to A on basis of securities. A drew a cheque and sent it to payee by post, but the latter did not receive it. It was altered into a cheque for a larger amount by another person and its payment was collected through a bank. A sued B for declaration that A was wrongly debited with the amount. It was held that as the cheque on the face of it did not disclose any traces of alterations, the payment made by bank B was a payment in due course and hence B was entitled to debit the amount to the account of A. 1956 Cal 399 (406) [(S) AIR V 43 C 122].

[7] Whether a Bank is guilty of negligence depends on the particular facts of each case. The onus of proving 'good faith' and 'absence of negligence' as contemplated by S. 131 of the Negotiable Instruments Act is on the banker claiming protection under the Act. 1958 Ker 316 (317) [AIR V 45 C 112] : ILR (1957) Ker 913 (DB).

[8] Section 85 (2) applies only to negotiable instruments. There can be no analogy between the mode of payment in the case of negotiable instruments and the mode of payment in the case of a telegraphic transfer. (60) 1960-1 Mad L Jour 187 (193) (DB).

[9] Section 85 (2) which applies to a paying bank has no bearing on the rights of a collecting bank which must be determined in accordance with the provisions of S. 131. 1955 Mad 402 (406) [(S) AIR V 42 C 107] : ILR (1955) Mad 411 (DB).

**Section 85A — Note 1**

[1] A draft is a bill of exchange and therefore a negotiable instrument — S. 85A makes a specific reference to drafts and brings them at par with bills of exchange. 1960 All 255 (240) [AIR V 47 C 53].

[2] A demand draft is a bill of exchange drawn by a bank on another bank or by itself on its own branch and is a negotiable instrument. 1951 Mad 910 (2) (913) [AIR V 35 C 326] : ILR (1952) Mad 22 (DB).

[3] A banker's draft is a bill of exchange and as such it is a negotiable instrument. 1956 Cal 615 (616) [(S) AIR V 43 C 175 (DB)].

[4] Where payment is made by bank drafts the place where the payment is received is in law the place where the drafts are received by the assessee. 1957 Madh B 64 (68) [AIR V 44 C 28] : ILR (1956) Madh B 160 (DB).

[5] *See also cases under S. 10.*

**Section 86 — Note 1**

[1] Section is confined in its application to Bills of Exchange and has no application to cheques. 1951 Assam 127 (128) [AIR V 35 C 60] (DB).



partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

*Explanation.*—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
- (b) where it undertakes the payment of part only of the sum ordered to be paid;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

## 87. Effect of material alteration.

Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties :

**Alteration by indorsee.**

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

### Section 86 -- Note 1 (contd.)

[2] Sections 83 and 86 do not deal with hundis payable on presentment—They deal with documents payable after sight. 1937 Pesh 103-104 : AIR V 24 (DB).

[3] Acceptor of bill of exchange is entitled to set off on due date as against bill any amount due to him by payee—Tender of balance due after set-off—Drawer is discharged, who till such tender is made is surety to extent of balance. 1916 Bom 294 (295, 296) [AIR V 5].

## SECTION 57 — SYNOPSIS

1. Material alteration.
2. Immaterial alteration.
3. Effect of alteration.
4. Onus probandi.
5. Revision.

1. **Material alteration.**—(a) *General*.—[1] A material alteration is one which varies the rights, liabilities, or legal position of the parties ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed. 1940 PC 160 (163) [AIR V 27] : 67 Ind App 318 : ILR (1940) All 625 : 1 L R (1940) Kar (PC) 287 + 1954 Mys 185 (186) [AIR V 41 C 80] : ILR (1955) Mys 221.

[See also 1947 Nag 145 (151) [AIR V 34 C 43] : ILR (1946) Nag 796 (DB).]

[2] The fact that an alteration does not ultimately involve any change in the rights and liabilities of the parties is not very germane to the consideration of the question whether it amounts to a material alteration within the meaning of S 87. Whether the change be prejudicial or beneficial to the maker does not in the least matter. Any alteration of any instrument is material which would alter the business effect of the instrument if used for any ordinary business purpose—If the legal identity or character of the instrument has been affected or if the liability has been attempted to have been extended by the alteration, it must be held to be material and this would be so irrespective of the fact whether the alteration is to the prejudice of the promisor or executant of the instrument or not. 1942 Mad 709 (710) [AIR V 29] : 1 L R (1943) Mad 143 + 1947 Nag 145 (151) [AIR V 34 C 43] : ILR (1946) Nag 796 (DB) + 1920 Lah 80 (83) [AIR V 7] : 1 Lah 262 (DB) + 1943 Mad 511 (512) [AIR V 30].

[3] Where negotiable instrument has been altered, answer to question whether alteration is material one depends on whether it changes rights and liabilities of parties thereto. It is immaterial whether change is prejudicial or beneficial. 1936 Rang 136 (138) [AIR V 23].

[4] Alteration which gives man right of action which he would otherwise not have is material alteration—Alteration affecting validity of contract in place of origin—Suit cannot lie on basis of it elsewhere. 1916 Mad 284 (286) [AIR V 3] : 38 Mad 746 (DB).

**Section 87 — Note 1 (contd.)**

[5] Sarkat executed by debtor in favour of several brothers—Name of eldest brother subsequently scored out to extend period of limitation for suit on sarkat — Alteration is material and remaining brothers cannot sue on it. 1947 Nag 145 (152) [A I R V 34 C 43] : I L R (1946) Nag 796 (DB).

[6] Alteration in S. 87, refers to deliberate alteration by party to instrument or by one on whom his interest had devolved and not by stranger when no conduct can be imputed to party in whose interest alteration has been effected or from which either his complicity, laches or negligence may be inferred. 1940 Mad 62 (66) [A I R V 27]. (*Overruled* on a different point in AIR 1957 Mad 715.)

*(b) Date of execution.*

[7] Alteration in date of execution of promissory note and of endorsement of payment is material alteration irrespective of fact whether alteration is to prejudice of promisor or not. 1940 Mad 62 (63) [A I R V 27]. (*Overruled* on a different point in AIR 1957 Mad 715.) \* 1951 Mys 102 (103) [A I R V 38 C 35] : I L R (1951) Mys 224 (DB) \* 1922 Low Bur 40 (1) (40) [A I R V 9] : 11 Low Bur Rul 382.

[See 1915 Mad 425 (425, 426) [A I R V 2]. (Where one of two joint promisors admits execution of promissory note and receipt of consideration, it is not open to him to plead alteration of date of the note.)

[8] The alterations of the date of execution of the deed and certain other words by making holes in the document without the consent of the obligee by the party in whose favour it was executed held in the particular case did not amount to material alterations within the meaning of the rule. 1940 P C 160 (165) [A I R V 27] : 67 Ind App 318 : I L R (1940) All 625 : I L R (1940) Kar (PC) 287.

*(c) Time of payment*

[9] Alteration in time of payment is material alteration. 1920 Lah 80 (83) [A I R V 7] : 1 Lah 262 (DB) \* 1936 Rang 136 (139) [A I R V 23].

*(d) Names of parties.*

[10] Where addition of one more name as executant is made in pronote without consent of other executants and is not made to carry out intention of original parties pronote is void as against original executants. 1935 Oudh 434 (435) [A I R V 22] : 11 Luch 360 (DB).

[11] Section 87 — Addition by payee of another executant to promissory note by forgery of signature—Suit by endorsee—Note is rendered void even as against admitted executants. 1943 Mad 511 (512) [A I R V 30].

[12] Where in a promissory note subsequent to its execution the words "the proprietor of the Karthika Stores" were inserted above the signature of the maker and below the date—*Held* that the alteration was a material alteration rendering the instrument unenforceable though the plaintiff might ultimately make up his mind to sue the maker in his individual capacity only. 1942 Mad 709 (711) [A I R V 29] : I L R (1943) Mad 143.

[13] One of executants had forged signature of other on note and creditor was aware of

this fact—*Held* there was material alteration. 1928 Mad 1092 (1093) [A I R V 15].

[14] Section applies even where although there has been no alteration after the note came into existence the note was created in the first instance itself with a forged signature of material character. 1914 Mad 369 (369) [A I R V 1].

[But see 1925 Mad 929 (932) [A I R V 12]. (Section 87 refers only to alteration after execution. Pronote was executed by two persons but signature of one of executants was forged.)

[15] Change of name of payee is material alteration. 1923 All 123 (124) [A I R V 10] (DB).

[16] Thief intercepting Namjogi hundi and substituting another name in place of original payee — Drawee paying amount to person so substituted as endorsee — Drawer held not liable because he is not a party to the alteration of the hundi — Drawee held liable in damages for wrongful conversion, measure of damages being amount of hundi. 1940 Bom 82 (84) [A I R V 27] (DB).

*(e) Interest or rate of interest.*

[17] Endorsement postponing payment and altering the rate of interest constitutes material alteration. In such case the actual position of the words within is immaterial 1936 Rang 136 (139) [A I R V 23].

[18] Insertion of rate of interest not agreed upon by parties when note was first made is material alteration of document. 1919 Low Bur 45 (45, 46) [A I R V 6] \* 1925 All 282 (1) (282) [A I R V 12].

*(f) Alteration of words "or order."*

[19] Where document is described as promissory note but is torn to pieces and is pieced together in such manner that name of payee and words "or order" were missing so that in effect it became bond, it was held there was material alteration whereby legal character of instrument itself was changed. (12) 12 Mad L Tim 333 (334).

*(g) Affixation of stamps and attestation.*

[20] Addition of attesting witnesses to unstamped promissory note after its execution has effect of converting it into bond and amounts to material alteration which invalidates instrument and destroys right of action on it. 1930 Lah 959 (960) [A I R V 17].

[21] Affixture of two out of four one-anna stamps subsequent to the execution of the promissory note without the knowledge of the executant, in order to make it an enforceable instrument in a Court of law, is a material alteration falling within the mischief of S. 87. (58) 71 Mad L W 398 (401). Definitions of two words "material" and "alteration" as given in standard lexicons quoted.

[22] Promissory note—Affixation of stamps and cancelling them and attestation of witness without consent of executor — Alteration held material alteration. 1959 Raj 96 (97) [A I R V 48 C 34] : I L R (1958) 8 Raj 1178.

**2. Immaterial alteration.—(a) General—**

[1] Immaterial alteration would not affect the binding nature of instrument. 1942 Mad 709 (710) [A I R V 29] : I L R (1943) Mad 143.

**Section 87 — Note 2 (contd.)**

[2] Correction of clerical error is not material alteration. 1955 N U C (Assam) 552S [AIR V 42].

*(b) Alteration outside body.*

[3] Principle that document in which alterations have been introduced is void and no decree can be based on void document is not applicable where alteration which was found to have been made by plaintiff is not in entry on basis of which suit has been instituted but in entry relating to repayment. 1940 Lah 228 (230) [AIR V 27].

[4] Alteration was found to be forgery and made outside body of note and signature—*Held* that it did not form part of note and did not constitute material alteration to vitiate note. 1936 Mad 616 (617, 618) [AIR V 25].

[5] Instrument is not vitiated by alteration made in it in good faith by party without knowledge of others if it was intended to carry out original intention of parties. 1917 Cal 511 (511, 512) [AIR V 4] : 44 Cal 154 (DB).

*(c) Intention of parties.*

[6] Agreement between parties to pay interest — Sarkhat as originally drawn up not containing reference to payment of interest through accidental omission — Creditor altering sarkhat by incorporating rate of interest without reference to debtor — Alteration though made without reference to other party does not make sarkhat void against debtor as alteration was made to carry out common intention of parties. Section 87 postulates possibility of such agreement being proved by oral evidence. 1939 All 248 (249) [AIR V 26] (DB).

[7] Acceptor asking for extension of time for payment — Time extended and extended date was substituted in bill—*Held*, there is no material alteration. 1928 P C 231 (233) [AIR V 15] : 55 Ind App 553 : 52 Bom 589.

[8] Memorandum of due date made on bill of exchange and when time for payment extended fresh entry made in place of old one — No material alteration is effected — Fresh stamp is not necessary. 1927 Bom 13 (16) [AIR V 14] : 50 Bom 656 (DB).

[9] Son representing that father and son would execute pronote affixing his thumb-mark to note—Father not coming to execute—Nishani of father affixed with consent of son though in absence of father — No material alteration since Nishani was put simultaneously with the execution. 1936 Mad 154 (154, 155) [AIR V 23].

[10] Adding "with interest" when rate already specified is not material alteration. 1925 P C 80 (82) [AIR V 12].

[11] A pronote was written as if both A and B would be executants. But after the consideration was paid to A and he signed the pronote B refused to sign it as no money was paid to him. The recital about B being a party to the instrument was deleted immediately after the execution of the pronote by A : *Held* that the deletion was not a material alteration under S. 87. 1954 Mys 185 (157) [AIR V 41 C 80] : ILR (1955) Mys 221.

*(d) By stranger.*

[12] Right of holder of promissory note

is not affected by material alteration in instrument when alteration has been made by stranger without consent of holder of instrument and when there has been no fraud or laches on part of holder. 1941 Mad 383 (385) [AIR V 28] : ILR (1941) Mad 293 (DB).

3. Effect of alteration. — (1) The principle upon which suits based on instruments which are materially altered are dismissed is not the interest of the party who is found to have executed the document but the interests of justice in general and this principle is equally applicable in India. 1935 Mad 40 (40) [AIR V 22].

[2] The effect of making a material alteration without the consent of the party bound is exactly the same as that of cancelling the deed. The avoidance of the deed is not retrospective and does not revest or re-convey any estate or interest in property which passed under it. And the deed may be put in evidence to prove that such estate or interest so passed or for any other purpose than to maintain an action to enforce some agreement therein contained. 1940 P C 160 (163) [AIR V 27] : 67 Ind App 318 : ILR (1940) All 625 : ILR (1940) Kar (PC) 287.

[3] If an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed after its execution, by or with the consent of any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void. The avoidance however is not *ab initio* or so as to nullify any conveyancing effect which the deed has already had, but only operates as from the time of such alteration and so as to prevent the person who has made or authorised the alteration and those claiming under him, from putting the deed in suit to enforce, against any party bound thereby who did not consent to the alteration, any obligation, covenant or promise thereby undertaken or made. 1940 P C 160 (163) [AIR V 27] : 67 Ind App 318 : ILR (1940) All 625 : ILR (1940) Kar (PC) 287.

[4] Section 87 has nothing to do with the liability of the executant of the instrument. It only says that the indorsee has to suffer the loss occasioned by his own fraud. Therefore, the contention that as the section only mentions about the liability of the indorser, the liability of other parties to the note would not be affected by the material alteration, is untenable. 1957 Mad 715 (719) [AIR V 44 C 227] : ILR (1957) Mad 987 (DB).

[5] Where the plaintiffs alone are responsible for the alteration, they cannot claim any amount as due under the pro-note. 1951 Mys 102 (103) [AIR V 38 C 35] : ILR (1951) Mys 224 (DB). (12 Mad 230, *rel. on.*)

[6] Where it has been established that a promissory note had been altered by the promisor himself but in his written statement he had admitted that he had executed the note for Rs. 1,000 (and not for Rs. 1,471 which was alleged to be altered figure) out of which he had paid Rs. 600 but he was not able to establish the repayment : *Held* that the promisee was entitled to a decree for Rs. 1,000 with

**88. Acceptor or indorser bound notwithstanding previous alteration.**

An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

**89. Payment of instrument on which alteration is not apparent.**

Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

**Section 87 — Note 3 (contd.)**

interest up to the date of the institution of suit. 1957 Him Pra 35 (37) [AIR V 44 C 13].

[7] A material alteration invalidates the instrument against all parties not consenting to the change. 1947 Nag 145 (151) [AIR V 34 C 43] : ILR (1946) Nag 796 (DB).

[8] Law requires fresh stamp when material alteration is made as alteration makes instrument new one. 1936 Rang 136 (138) [AIR V 23].

[9] Document found to be forged — No decree should be passed on it. 1935 Mad 40 (40) [AIR V 22].

[10] Promissory note — Original cause of action — Transaction of pronote and loan inseparable — Pronote under S. 87 is inadmissible — No general evidence to prove payment of money as loan can be given under S. 91, Evidence Act — Nor note can be used in evidence for this purpose — Suit on original consideration is barred. 1937 All 439 (441, 442) [AIR V 24] (DB) \* 1914 All 410 (2) (411) [AIR V 1]. (No decree even for amount admitted by defendant.) \* 1937 Pat 572 (573, 575) [AIR V 24] : 16 Pat 527 (DB). (Do.) \* 1920 Lah 80 (83) [AIR V 7] : 1 Lah 262 (DB). (Party cannot fall back on contract as it existed prior to alteration.) \* 1943 Mad 511 (512) [AIR V 30]. (Payee bringing about forgery of one executant — Others admitting execution can still escape liability.) \* 1923 Nag 295 (295) [AIR V 10] : 19 Nag L R 79 \* 1939 Pat 255 (255, 256) [AIR V 26]. (Handnote executed in satisfaction of previous handnote altered — Promisee cannot sue on basis of original consideration — Admission that hand-note originally executed satisfied previous one cannot be used to revive his right to sue on original hand-note.)

[But see 1925 Oudh 486 (486) [AIR V 12]. (Material alteration rendering pronote void does not discharge maker from all liability. Pronote becomes void owing to material alteration. Executant admitting loan is liable to extent to which he has admitted same.)]

[11] Under S. 87, a promissory note which has been altered by the payee cannot be enforced by him. If the sum was lent earlier and the promissory note subsequently executed was only an acknowledgment of the loan and security for it, the plaintiff may obtain a decree on that loan, in spite of the subsequent promissory note becoming unenforceable by reason of material alteration made by him. But where it is found that the passing of consideration and the execution of the promissory note were simultaneous, S. 91, Evidence Act, would be an obvious bar to the admission of any evidence aliunde to prove the passing of consideration under the promissory note.

Where the promissory note is rendered void and inadmissible due to material alteration, no decree can be passed on it. 1957 Mad 715 (718, 719) [AIR V 44 C 227] : ILR (1957) Mad 987 (DB). (AIR 1940 Mad 62, *Overruled*)

[12] Renewed promissory note materially altered and becoming void under this section — Suit on original promissory note lies — Document acknowledging part payment under renewed promissory note can be treated as acknowledgment of liability arising under the original promissory note. 1960 Andh Pra 121 (122) [AIR V 47 C 41]. (AIR 1957 Mad 715, *Rel. on.*)

[13] Upon failure of action on promissory notes due to material alteration, subsequent suit to recover consideration is not barred under O. 2, R. 2. Though claims in two actions arise out of same transaction, yet they are in respect of different causes of action. (14) 41 Ind App 142 (148) (PC).

[14] A party who has the custody of an instrument made for his benefit is bound to preserve it in its original state and any material alteration will vitiate the instrument. The document is not receivable in evidence to prove the debt. 1960 Andh Pra 121 (122) [AIR V 47 C 41]. ((1844) 67 R R 638, *Rel. on.*) \* 1951 Mys 102 (103) [AIR V 38 C 35] : ILR (1951) Mys 224 (DB).

4. *Onus probandi.* — [1] It is incumbent upon person suing on instrument which appears to be altered to show that alteration was not improperly made. 1939 Lah 31 (32) [AIR V 26] (DB) \* 1960 Andh Pra 121 (122) [AIR V 47 C 41]. ((1828) 5 Bing 183, *Rel. on.*) \* 1951 Mys 102 (103) [AIR V 38 C 35] : ILR (1951) Mys 224 (DB) \* 1947 Nag 145 (153) [AIR V 34 C 43] : ILR (1946) Nag 796 (DB). (AIR 1924 Nag 250 & Halsbury's Laws of England, *Foot.*) \* 1942 Mad 709 (710) [AIR V 29] : ILR (1943) Mad 143 \* 1935 Rang 151 (151) [AIR V 22].

5. *Revision.* — [1] Mere misconstruction by Subordinate Court of S. 87 of Negotiable Instruments Act, is not ground for revision by High Court under S. 115, Civil P. C. (11) 12 Ind Cas 138 (138) (Mad).

**Section 89 — Note 1**

[1] A had several accounts, individual and joint, with Bank B. The parties also had an agreement to extend overdraft to A on the basis of securities deposited by A and no maximum limit was fixed on such overdraft. A drew a cheque for Rs. 256 and sent it by post to the payee who did not receive it. It was altered into a cheque for Rs. 2,34,081 by another person and its payment was collected through a bank. In suit by A against Bank B for declaration that A was wrongly debited

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

## 90. Extinguishment of rights of action on bill in acceptor's hands.

If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

## CHAPTER VIII OF NOTICE OF DISHONOUR

### 91. Dishonour by non-acceptance.

A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

#### Section 89 — Note 1 (contd.)

with the amount : *Held* (1) that as the cheque on the face of it did not disclose any traces of alterations of obligations at the time it was presented for encashment, the payment made by the Bank B was a 'payment in due course' and was according to the 'apparent tenor of the cheque' and hence Bank B was entitled to debit the amount to the account of the plaintiff. (2) That as the Bank B had occasions to pay A's cheques, bodies of which had been in other person's handwriting, and as the signature of A on the questioned cheque was genuine, the mere fact that the body of the cheque appeared to be in the handwriting of a person different from the drawer of the cheque was not a matter which could have roused suspicion in the mind of the officials of the Bank. 1956 Cal 399 (405, 406) [(S) AIR V 43 C 122].

[2] The negligence in order to estop the owner drawing a cheque must be negligence in the transaction itself. The transmission by post, if it is at all any act of negligence is negligence collateral to the transaction and it cannot be regarded as the proximate cause of the forgery. It will not disentitle the owner of it to recover the draft or its proceeds from person or persons who has or have wrongfully obtained possession thereof. 1956 Cal 399 (408) [(S) AIR V 43 C 122].

[3] The bank has to see whether there are any alterations in the cheque and whether they have been properly authenticated. Where an alteration in a cheque is initiated not by all the drawers but only by some of them, the bank will be paying the amount on the said cheque at its own risk. The protection under S. 89 is afforded to the bank paying a cheque where the alteration is not apparent. 1959 Mad 119 (122) [AIR V 46 C 39].

#### Section 91 — Note 1

[1] A bill of exchange payable at sight or on demand may in the option of the holder be presented for acceptance and if it is not accepted by the drawee it will be said to have been dishonoured and the case would then be covered by Ss. 91 and 93. 1919 Mad 179 (182) [AIR V 6 C 100].

[See 1958 Punj 222 (227) [AIR V 45 C 60] : ILR (1958) Punj 1178 (DB). (Per Chopra J.)]

[2] A bill of exchange payable at sight is not required by law to be presented for acceptance only but when presented for payment it must be deemed to have been presented both for acceptance and payment. On its being dishonoured the provisions of Ss. 91 to 93 would become applicable. 1958 Punj 222 (226) [AIR V 45 C 60] : ILR (1958) Punj 1178 (DB). (Per K. L. Gosain J.)

[3] A bill of exchange payable after sight is required by law to be presented for acceptance and if it is dishonoured on being presented, the provisions of Ss. 91 and 93, are attracted. 1958 Punj 222 (226) [AIR V 45 C 60] : ILR (1958) Punj 1178 (DB). (Per K. L. Gosain J.)

[4] A bill of exchange payable on a fixed date is not required by law to be presented for acceptance but may at the option of the holder be presented for acceptance at any time earlier than the date fixed. If it is presented for acceptance and it is dishonoured, a notice of dishonour becomes essential. 1958 Punj 222 (226) [AIR V 45 C 60] : ILR (1958) Punj 1178 (DB). (Per Gosain J.)

[5] Where a bill of exchange was dishonoured at maturity by the defendant acceptor and the bill was afterwards returned to the drawer without endorsement by Bank to which it was endorsed it was held that the drawer could sue the acceptor on contract

**92. Dishonour by non-payment.**

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

**93. By and to whom notice should be given.**

When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

**Section 91 — Note 1 (contd.)**

between him and the acceptor when the bill was dishonoured. (1909) 36 Cal 291 (294).

[6] Where there is no allegation that the presentment was excused, the plaintiff must prove that the drawee was required to accept the bill and that he dishonoured it by non-acceptance. 1925 Mad 444 (445) [A I R V 12] (DB).

**Section 92 — Note 1**

[1] *Oldfield J.*— Refusal to pay referred to in S. 92 includes refusal to accept such as is contemplated in S. 91. 1919 Mad 179 (183) [A I R V 6] (DB).

[2] Under S. 92, a bill of exchange is regarded as dishonoured by non-payment only when default in payment is made by its acceptor. 1958 Punj 222 (227) [A I R V 45 C 60] : I L R (1958) Punj 1178 (DB).

[3] Where the holder of a hundi payable at sight, without presenting it for acceptance, presents it to the drawee for payment and the hundi is dishonoured, notice of dishonour to the drawee is necessary and where the same is not given within a reasonable time the drawer is absolved of his liability on the hundi. 1958 Punj 222 (227) [A I R V 45 C 60] : I L R (1958) Punj 1178 (DB).

[4] *A* drew a cheque on *B* in favour of *C* on 20-3-1945. *C* presented the cheque to *B* for payment on 21-3-1945 but it was returned with endorsement that it would be honoured after collection of assets of the drawer. *C* then negotiated the cheque with the plaintiff bank, and received full payment. The plaintiff then presented the cheque to *B* on 26-5-1945, but it was dishonoured on the ground that the payment had been stopped by the drawer. The plaintiff thereupon sued *A* and *C* for recovery of the amount of the dishonoured cheque. *Held*, that the endorsement dated 21-3-1945 did not amount to a dishonour of the cheque within S. 92, and the plaintiff was therefore, the holder in due course when the cheque was subsequently dishonoured on 26-5-1945. 1951 Assam 127 (128) [A I R V 38 C 60] (DB).

**Section 93 — Note 1**

[1] Section 93 enumerates the persons by and to whom notice is to be given. The section is not meant to be an exhaustive code of cases in which notice is necessary. 1958 Punj 222 (228) [A I R V 45 C 60] : I L R (1958) Punj 1178 (DB).

[2] The object of a notice of dishonour to endorser is not to demand payment but clearly to indicate to the party notified that the contract arising on the negotiable instrument has been broken by the principal debtor and that the former being a surety will now be liable for the payment. This is the principle embodied in S. 93. 1956 Raj 129 (136) [A I R V 43 C 40] : I L R (1956) 6 Raj 612 (DB).

[See 1953 All 637 (640) [A I R V 40 C 318] : I L R (1954) 1 All 268.]

[3] The stringent and technical provisions of the Negotiable Instruments Act with respect to presentment or notice of dishonour cannot be called into operation in determining the liability in the case of hundis which came to be executed in a territory where there was no such Act in force at the relevant time. 1956 Raj 129 (133) [A I R V 43 C 40] : I L R (1956) 6 Raj 612 (DB).

[4] Holder must give notice of dishonour to persons other than drawee or acceptor whom he seeks to make liable on bill, except in cases enumerated in S. 98. 1920 Lah 80 (83) [A I R V 7] : 1 Lah 262 (DB) \* 1954 Orissa 124 (126) [A I R V 41 C 36] : I L R (1954) Cut 46 (DB).

[5] The loss of a bill or note does not absolve the party who lost it from making an application for payment when it becomes due and to give notice of dishonour to all parties. 1936 Nag 260 (262) [A I R V 23] : I L R (1939) Nag 661.

[6] Obligation of endorsee to give notice of dishonour by non-acceptance or non-payment to endorser exists, whether promissory note was dishonoured or not before indorsement. 1931 Mad 113 (114) [A I R V 15].

[7] Neglect to give notice of dishonour within reasonable time exonerates indorsers

**94. Mode in which notice may be given.**

Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

**Section 93 — Note 1 (contd.)**

and others where they are likely to suffer damage thereby. 1911 Lah 405 (406) (AIR V 1).

[8] In absence of notice of dishonour endorser of promissory note is not liable unless special contract to contrary is proved. 1935 Mad 22 (2) (23) (AIR V 23).

[9] When cheque is dishonoured, it is incumbent upon endorsee to give endorser with notice of dishonour under S. 93 and in absence of such notice he cannot sue on original consideration. 1935 Lah 799 (799) (AIR V 23).

[10] Notice of dishonour is not compulsory where bill is payable at sight has been dishonoured. 1937 Pesh 103 (109) (AIR V 24) (DB).

[11] A bill of exchange payable after sight is required by law to be presented for acceptance, and if it is dishonoured on being presented, the provisions of Ss. 91 and 93 are attracted, and a notice of dishonour becomes essential. 1958 Puj 222 (226) (AIR V 45 C 60); ILR (1958) Puj 1178 (DB).

[12] Where the suit by the holder is not for compensation on account of dishonour of the cheque, but, on the contrary, for recovery of the balance of money due on the original transaction of having supplied paddy and in discharge of which the dishonoured cheque was given no question of notice of dishonour can arise. 1954 Oissa 124 (126) (AIR V 41 C 36); ILR (1954) Cut 46 (DB).

[13] Where a promissory note concluded with the endorsement, "If the amount on the aforesaid promissory note is not realised as aforesaid, I will myself be liable for the same"—*Held* that the endorsement should be construed as a guarantee to pay, which should be sufficient to take away the necessity of complying with the formalities required by the Act of presentment under S. 64 and notice of dishonour under S. 93. (54) 1954-2 Mad L Jour 603 (604).

[14] Where in a notice calling upon both the maker and the endorser to make the payment, there is also a reference that whenever the demand was made the amounts, principal and interest were not paid and that defendants were saying that it will be given and that they were evading, it cannot be assumed from these words that there must have been oral demands, presentment of the promissory note should have been made and the fact of dis-

honour should also have been intimated to the endorser. There should be something to indicate in the notice itself that there has been failure of payment on presentment and therefore dishonour of the promissory note. 1951 Mad 652 (654) (AIR V 38 C 182).

[15] A notice must clearly intimate that payment was demanded from the drawer but refused and that the holder holds the person notified liable on the instrument. 1950 Raj 129 (136) (AIR V 43 C 40); ILR (1950) 6 Raj 612 (DB).

[16] The plaintiff in a suit based on a negotiable instrument where he is the endorsee must state clearly in his plaint that a notice of dishonour was sent to the endorser and must give the particulars thereof, or where he considers that he is exempt from giving this notice, he should allege the facts which exempt him from giving such notice. 1950 Raj 129 (136) (AIR V 43 C 40); ILR (1950) 6 Raj 612 (DB).

[17] Where the holder of a bill of exchange payable at sight does not elect to present the instrument for acceptance, but merely presents the same for payment to the drawee, if the drawee in such a case makes default in payment S. 93 would not come into play. 1958 Puj 222 (227) (AIR V 45 C 60); ILR (1958) Puj 1178 (DB).

[18] A cheque had been drawn in favour of A and it was subsequently endorsed by A in favour of the plaintiffs but was not honoured by the bank. No notice of dishonour was sent to A. The plaintiff, however, relied on a deed of agreement executed when the endorsement of the cheque had been made by A in favour of the plaintiffs. By means of this agreement A undertook to pay the amount of the cheque to the plaintiff along with damages if the amount under the cheque was not received by the plaintiffs. *Held*, that the plaintiffs were entitled to rely on this document for holding A liable. 1955 N U C (All) 1699 (AIR V 42).

[19] See also Section 30.

**Section 94 — Note 1**

[1] A notice may be oral or written but it is necessary that it must have been given within a reasonable time. 1956 Raj 129 (136) (AIR V 43 C 49); ILR (1956) 6 Raj 612 (DB).

[2] A notice of dishonour given four years after the dishonour cannot be said to have



**95. Party receiving must transmit notice of dishonour.**

Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

**96. Agent for presentment.**

When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

**97. When party to whom notice given is dead.**

When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

**98. When notice of dishonour is unnecessary.**

No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto ;
- (b) in order to charge the drawer when he has countermanded payment ;
- (c) when the party charged could not suffer damage for want of notice ;
- (d) when the party entitled to notice cannot after due search be found ; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;
- (e) to charge the drawers, when the acceptor is also a drawer ;
- (f) in the case of a promissory note which is not negotiable ;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

**Section 94 — Note 1 (contd.)**

been given within a reasonable time. Burden of proof that no damage could be suffered by the drawer for want of notice of dishonour is on the plaintiff. 1950 Raj 55 (56) [AIR V 37 C 21].

[3] The giving of a notice of dishonour is a part of the plaintiff's cause of action and is a condition precedent for making the endorser liable and in the absence of such notice his liability to the endorsee must stand extinguished. 1956 Raj 129 (136) [AIR V 43 C 40] ; ILR (1956) 6 Raj 612 (DB).

**Section 98 — Note 1**

[1] Notice can only be dispensed with under the circumstances mentioned in S. 98. ('12) 14 Ind Cas 51 (51) (DB) (All).

[2] Section 98 contains the exceptions to the general rule requiring notice of dishonour, and it is for the person relying upon any such exception to establish all the requirements thereof. 1920 Lah 80 (83) [AIR V 7] ; 1 Lah 262 (DB) ; 1929 Lah 577 (578) [AIR V 16] ; 11 Lah 34 (DB) \* ('57) 1957-27 Com Cas 494 (496) (Mad) ; 1954 Orissa 124 (126) [AIR V 41 C 36] ; ILR (1954) Cut 46 (DB) ; 1950 Raj 55 (56) [AIR V 37 C 21]. (Burden of proof to show that no damage was suffered by the drawer for want of notice.)

[See also 1958 Punj 222 (228) [AIR V 45 C 60] ; ILR (1958) Punj 1178 (DB).]

[3] Payee of promissory note endorsing it after it became barred and with fabricated

endorsement of payment—It is not necessary to give notice of dishonour to him. 1940 Mad 85 (86) [AIR V 27].

[4] It is not necessary that the actual words "countermanding payment" should be used; it is sufficient if the words used clearly show that the drawer does not want payment to be made in accordance with the tenor of the hundi. The question of countermanding payment is a question of fact. 1936 Mad 506 (507) [AIR V 23].

[5] Where the question of averment about countermanding of payment by drawer of hundi is raised in the trial Court, though it is not pleaded in the plaint, the plaint need not be amended when it does not affect or prejudice the interest of the parties. 1936 Mad 506 (507) [AIR V 23].

[6] Where it is alleged that notice of dishonour was not necessary as party charged could not suffer damage for want of notice, it is upon party who wants to excuse himself for non-presentation, that onus lies to prove that other party could not suffer damage. 1932 Nag 55 (60) [AIR V 19] ; 28 Nag L R 134 (DB) \* ('11) 33 All 4 (6) (DB) \* ('11) 1911 Ind L R No. 110, p. 637 (500).

[7] If acceptor is one of drawers, both drawers would be liable even though no notice of dishonour has been given. 1929 All 254 (255) [AIR V 16] ; 51 All 530 (DB).

[8] The expression used in cl. (g) of S. 98 is "unconditional promise to pay." The "promise" contemplated by that clause, therefore,



## CHAPTER IX OF NOTING AND PROTEST

### 99. Noting.

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted<sup>a</sup> by a notary public<sup>b</sup> upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

[a] See the Notaries Act, 1952 (LIII of 1952), S. 8 (1) (c). [b] See *ibid.*, S. 11.

### 100. Protest.

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted<sup>a</sup> and certified by a notary public.<sup>b</sup> Such certificate is called a protest.

**Protest for better security.**

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

[a] See the Notaries Act, 1952 (LIII of 1952), S. 8 (1) (c). [b] See *ibid.*, S. 11.

### 101. Contents of protest.

A protest under section 100 must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon ;

**Section 98 — Note 1 (*contd.*)**

need not be express. If a person unequivocally acknowledges that a debt is due from him, he should be taken, impliedly, to promise to pay it. He may couple his acknowledgment with some expression which shows that he was not promising to pay; but if there is no such qualification, the acknowledgment of the debt involves an implied promise to pay. 1945 Bom 359 (360, 361) [AIR V 32] (DB).

[9] The defendant issued a cheque in favour of one S drawn on M bank. S discounted the cheque with the plaintiff bank which presented the cheque to the M bank but it was dishonoured for the reason that it was not arranged for. Two months thereafter the plaintiff sent a lawyer's notice to the defendant asking for payment of the amount and the defendant denied liability contending that he had not been given notice of dishonour in time. *Held* that strictly no notice of dishonour was necessary in this case; but even if such a notice was necessary S. 98 (c) was applicable and it was sufficiently established that the defendant did not suffer any damage by reason of the failure to give notice. (57) 1957-27 Com Cas 494 (497) (Mad).

[10] The plaintiff bank received at its branch certain hundis from its customer firm and credited the amount. The branch was thereafter closed on account of communal riots. Later on, the bank, on reconstruction of accounts came to know that they were dis-

honoured, and that all the adult male members of the firm had lost their lives in the riots and only the widow or minors survived. The bank then debited the firm and brought a suit to recover those amounts. *Held* that the bank did all it could in the peculiar circumstances of the case. There was no proper proof that the bank was negligent in presenting the hundis. The notice of dishonour was not necessary as the defendants were minors. The bank, therefore, was entitled to debit the firm and receive the amounts. 1957 Punj 257 (259) [AIR V 44 C 93] (DB).

[11] Where the suit by the holder is not for compensation on amount of dishonour of the cheque but, on the contrary, for the recovery of the balance of money due on the original transaction of having supplied paddy and in discharge of which the dishonoured cheque was given, no question of notice of dishonour can arise. 1954 Orissa 124 (126) [AIR V 41 C 30] ; ILR (1954) Cut 49 (DB).

[12] Where the reason for dishonour of the cheque was that the drawer's account had been closed, no question of any damage to the drawer or his representatives by reason of absence of notice of dishonour would arise. 1953 Assam 94 (95) [AIR V 40 C 40] ; ILR (1951) 3 Assam 515. (In such a case, a suit on the basis of the dishonoured cheque cannot fail for want of notice of dishonour.)

- (b) the name of the person for whom and against whom the instrument has been protested ;
  - (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found ;
  - (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;
  - (e) the subscription of the notary public making the protest ;
  - (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.
- <sup>a</sup>[A notary public<sup>b</sup> may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

[a] Added by the Negotiable Instruments Act, 1885 (II of 1885), S. 5. [b] For the construction of "a notary public", now see the Notaries Act, 1952 (LIII of 1952), S. 11.

## 102. Notice of protest.

When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions ; but the notice may be given by the notary public who makes the protest.

## 103. Protest for non-payment after dishonour by non-acceptance.

All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

## 104. Protest of foreign bills.

Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

## <sup>a</sup>[104A. When noting equivalent to protest.

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting.]

[a] Inserted by the Negotiable Instruments Act, 1885 (II of 1885), S. 6.

## CHAPTER X OF REASONABLE TIME

## 105. Reasonable time.

In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

### Section 104 — Note 1

[1] A bill drawn upon a resident in British India is an inland bill for which no protest is necessary. The fact that the bill was drawn out of British India does not make it a foreign bill. 1930 Cal 692 (692) [A I R V 17] : 57 Cal 730.

### Section 105 — Note 1

[1] Reasonableness of time for presenting bill of exchange for payment is mixed question of law and fact. 1920 Lah 413 (413) [A I R V 7] (DB) + 1929 Lah 577 (577) [A I R V 16] : 11 Lah 34 (DB).  
[2] In considering the question of reasonable

**106. Reasonable time of giving notice of dishonour.**

If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

**107. Reasonable time for transmitting such notice.**

A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE  
IN CASE OF NEED**108. Acceptance for honour.**

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. \* \* \*

[The second sentence was omitted by the Negotiable Instruments Act, 1885 (II of 1885), S. 7.]

**Section 105 -- Note 1 (contd.)**

time facts such as the distance at which persons live from each other, the course of dealing, the speed of mail, the nature of the instrument, and all such other circumstances applicable to the case ought to be considered. But when these facts have been ascertained, the reasonableness of the time becomes a mixed question of law and fact. 1929 Lah 577, 577. AIR V 16; 11 Lah 34 (DB).

[2] Though S. 105 does not make distinction between bills of exchange payable on demand and promissory notes payable on demand, the section gives a wide discretion to Courts to distinguish between commercial negotiable instruments and pro-notes, particularly those as between parties who are not merchants. 1954 Mad 855 (Prs 2, 3, 4) [AIR V 41 C 285]. (Parties being non-commercial persons and mutually accommodating, delay of 6 or 7 days in issuing notice of dishonour—Held not unreasonable time within meaning of S. 74 read with S. 105.)

**Section 106 -- Note 1**

[1] A perusal of S. 106 of the Act leaves no doubt that the notice of dishonour should be given as the bill is dishonoured. It is the duty of the holder to prove that due notice was given and if not given he was excused from doing so for any of the reasons specified in S. 98. The omission to give notice of dishonour has the effect of discharging the persons who are entitled to such notice. 1929 Lah 577 (578) [AIR V 16]; 11 Lah 34 (DB). (Case of delay of 27 days in giving notice of dishonour.)

[2] Notice of dishonour must be given so

far as the endorser is concerned. It is a matter of principle and not technicality. Failure to give notice within reasonable time will absolve endorser from all liability to the holder. This requirement must be enforced in case of hundis even though the Act may not, in terms, apply. This rule is in accord with justice, equity and good conscience. Such a notice must be given within a reasonable time. This requirement may be dispensed with only in the case of negotiable instruments in an oriental language where a local usage or custom is established to the contrary. 1950 Bq 129 (Prs 10, 20) [AIR V 45 C 40]; 1 LR (1950) B Bq 612, (DB).

[3] Shajid hundis are recognised as negotiable instruments by local usage. A hundi of this type must necessarily be presented to the drawee and a notice of dishonour of the same must be given to the drawer, endorser and all other concerned parties. Technical rules, as regards time and manner provided for in the Act would not necessarily apply to such notices. But all the same the notice must be within reasonable time and the provisions of the Act in this respect must "substantially" as contradistinguished from "technically" be complied with. 1960 Punj 157 (Prs 8, 11) [AIR V 47 C 53] (DB). (Delay of ten days in giving notice not explained. Note held not given within reasonable time.)

[4] Where the parties carry on the business at the same place and the hundi is dishonoured on 2nd September 1943, a notice of dishonour, given on 1st October 1943, is much beyond reasonable time within the meaning of S. 106. 1958 Punj 222 (Pr 8) [AIR V 45 C 60]; 1 LR (1958) Punj 1178 (DB).

**109. How acceptance for honour must be made.**

A person desiring to accept for honour must, <sup>a</sup>[by writing on the bill under his hand,] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour <sup>b</sup>[\* \* \*].

[a] *Substituted* for the words "in the presence of a notary public, subscribe the bill with his own hand, and", by the Negotiable Instruments Act, 1885 (II of 1885), S. 8. [b] The words "and such declaration must be recorded by the notary in his register" were *omitted, ibid.*

**110. Acceptance not specifying for whose honour it is made.**

Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

**111. Liability of acceptor for honour.**

An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

**112. When acceptor for honour may be charged.**

An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

**113. Payment for honour.**

When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying <sup>a</sup>[or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

[a] *Inserted* by the Negotiable Instruments Act, 1885 (II of 1885), S. 9.

**114. Right of payer for honour.**

Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

**115. Drawee in case of need.**

Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

**Section 113 — Note 1**

[1] Section 113 has no application to "drawee in case of need," in bill of exchange. Where vendor takes bill to his own order, property in goods cannot pass to purchaser until he accepts bill and meets it on presentation. When purchaser accepts bill and dishonours it on presentation, contract between him and vendor comes to end and when bill is accepted and met on presentation by "drawee in case of need" property in goods passes to "drawee in case of need" unless purchaser can show some new contract between him

and vendor. 1941 Rang 270 (271) [AIR V 25] (DB).

**Section 115 — Note 1**

[1] Non-presentment to drawee in case of need absolves drawer from liability. 1929 Lah 577 (578) [AIR V 16] : 11 Lah 34 (DB).

[2] A bill of exchange was accepted by the drawee but subsequently dishonoured by non-payment—But was not presented to drawee in case of need for acceptance — *Held* that the bill should have been presented to the drawee in case of need in all cases and accepted by

**116. Acceptance and payment without protest.**

A drawee in case of need may accept and pay the bill of exchange without previous protest.

## CHAPTER XII OF COMPENSATION

**117. Rules as to compensation.**

The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall [\* \* \*] be determined by the following rules:—

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the

**Section 115 — Note 1 (contd.)**

him even where the drawee accepts it and subsequently dishonours; failing which the drawee in case of need cannot be made liable. 1938 Bom 364 (366) [A I R V 25].

[3] Where a vendor takes a bill of exchange to his own order the property in the goods cannot pass to the purchaser until he accepts the bill and meets it on presentation. But when the purchaser accepts the bill and dishonours it on presentation, the contract between him and the vendor comes to an end and thereafter when the bill is accepted and met on presentation by the drawee in case of need, the property in the goods passes to the drawee in case of need unless the purchaser can show some new contract between him and the vendor. 1941 Rang 270 (271) [A I R V 28] (DB).

**Section 116 — Note 1**

[1] As it is necessary that a drawee in case of need must accept before he is bound, it follows that the bill must be presented to him for acceptance in all cases, even if the drawee in the first instance accepts and then dishonours the bill by non-payment. Hence where such bill is not presented for acceptance nor accepted by the drawee in case of need, he is not liable. 1938 Bom 364 (366, 367) [A I R V 25].

**Section 117 — Note 1**

[1] Where the manager of a joint Hindu family incurs debt for the benefit of the family and executes a promote for the same which is indorsed by payee to third party without assigning the debt as well the indorsee can sue on the promote alone and not debt and decree obtained by him on the promote against the maker being one for compensation and not for debt cannot be executed against the other members of the family. 1942 Mad 161 (165, 166) [A I R V 29]; I L R (1942) Mad 204 (DB).

[2] Where according to the terms of the bills, they were to be paid at the current rate for Bank demand drafts at the date of payment—*Held* that the rate of exchange should be calculated at the due date. 1923 Bom 241 (241) [A I R V 10]; 47 Bom 493 (DB).

[3] On a construction of Ss. 43, 50 and 117, the endorsee of the promissory note executed by A in favour of B should be entitled to the amount under the promissory note and not the amount which he might have been proved to have actually paid for the endorsement or assignment of the promissory note in favour of B. 1954 Mad 960 (961) [A I R V 41 C 335].

[4] If any party is "liable to the holder" S. 117 will apply. The section does not enforce a right on the holder to enforce payment against the drawee in general. 1953 All 637 (641) [A I R V 40 C 318]; I L R (1954) 1 All 268.

same is liable to make compensation thereof in the same manner as in the case of the original bill.

[a] The words, figures and brackets "(except in cases provided for by the Code of Civil Procedure, section 532)" were omitted by the Negotiable Instruments (Interest) Act, 1926 (XXX of 1926), S. 3.

## CHAPTER XIII

### SPECIAL RULES OF EVIDENCE

#### **118. Presumptions as to negotiable instruments— (a) of consideration; (b) as to date; (c) as to time of acceptance; (d) as to time of transfer; (e) as to order of indorsements; (f) as to stamp; (g) that holder is a holder in due course.**

Until the contrary is proved, the following presumptions shall be made:—

- (a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- (b) that every negotiable instrument bearing a date was made or drawn on such date;
- (c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) that every transfer of a negotiable instrument was made before its maturity;
- (e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

#### SECTION 118 — SYNOPSIS

- 1. Scope.
- 2. Clause (a).
- 3. Clause (b).
- 4. Clause (c).
- 5. Clause (f).
- 6. Clause (g).

1. Scope. — [1] The Negotiable Instruments Act lays down certain special rules of evidence and certain special presumptions and precludes certain pleas being raised in particular circumstances; but beyond the scope of such rules or what may follow as necessary implication thereupon, the applicability of the general principles of law or the ordinary rules of evidence cannot be excluded in claims relating to negotiable instruments. 1935 Mad 181 (182) [AIR V 22]: 58 Mad 693 (FB).

[2] The 'special rules of evidence' laid down in S. 118 apply only as between parties to instrument or those claiming under them. In other cases, presumption will only be in terms of S. 114 of the Evidence Act. 1937 Mad 182 (184) [AIR V 24]: ILR (1937) Mad 299 (DB).

[3] The provisions of S. 118 do not affect question with regard to admissibility of evidence of document which depends entirely upon the document as it stands. 1925 Bom 527 (528) [AIR V 12] (DB).

[4] Presumption under S. 118 is always rebuttable. 1923 Lah 638 (640) [AIR V 10] (DB): 1956 Mys 30 (30) [AIR V 43 C 10]: ILR (1955) Mys 641.

[5] The presumption arising under S. 118 can be rebutted even by circumstantial evidence. 1930 All 568 (569) [AIR V 17] (DB): 1933 Lah 1029 (1031) [AIR V 20] (DB): 1957 Mad 182 (187) [AIR V 24]: ILR (1957) Mad 299 (DB).

2. Clause (a).—(a) *Principle*—[1] There is a principle behind S. 118 (a) and it is not a mere technical provision which cannot be looked into where the Act is not in force. The presumption is a matter of principle to facilitate negotiability as well as trade. There was such a presumption of consideration at Common law also in England till it was given statutory recognition. The presumption as to consideration is the very ingredient of negotiability and in the case of a negotiable instrument, pre-

**Section 118 — Note 2 (contd.)**

sumption as to consideration has to be made. 1959 Raj 1 (4) [AIR V 46 C 1] : ILR (1958) S Raj 717 (FB).

**(b) Nature and extent of presumption**

[2] The presumption arising under S. 118(a) is a rebuttable presumption. 1956 Mys 30 (30) [AIR V 43 C 10] : ILR (1955) Mys 641.

[3] Section 118 (a), Negotiable Instruments Act provides a special rule of evidence in the case of negotiable instrument contrary to the case of an ordinary contract. Party denying consideration has to prove want of consideration or, in other words, to rebut the presumption that the negotiable instrument was made or drawn for consideration. The statutory presumption in favour of there being consideration for every negotiable instrument continues unless it is rebutted. 1960 Punj 500 (503) [AIR V 47 C 182] (DB).

[4] Where the execution of a promissory note is admitted or proved, consideration for the promote is to be presumed under S. 118 (a) and the onus of proving want of consideration shifts on to the defendant who executed the note. (35) 61 Cal 1, Jour 17 (18) + 1938 PC 123 (125) [AIR V 25] : ILR (1938) Mad 648 (32 Sind L R 448 + 1938 PC 139 (140, 141) : AIR V 23 + 1958 Andh Pra 638 (642) [AIR V 45 C 182] + (58) 1958-2 Andh W R 570 (573). (Fact that payment was not made on date of execution is not sufficient to shift burden to the plaintiff. + 1957 Madh B 82 (83) [AIR V 44 C 35] + 1955 N U C (Trav-Co) 6035 [AIR V 42] + (55) Madh B L J 1955 HCR 788 (790). (Mere allegation without proof that the hundi was executed in respect of losses sustained in satta transaction will not shift the burden on to the plaintiff.) + 1953 Assam 94 (95) [AIR V 40 C 49] : ILR (1951) 3 Assm 515 + 1951 Cal 55 (60) [AIR V 38 C 19] : ILR (1952) 1 Cal 895 (DB) + (43) 1941 Jaipur L R 283 (285) + (41) 1941 Andh W N 613 (615). (It cannot be said that when there is a denial of execution of a promissory note, the plaintiff is bound to prove not only execution but also the consideration.) + (99) 5 Low Bar Rol 46 (49) + 1935 All 154 (155) [AIR V 22] (DB) + 1935 Lah 716 (718) [AIR V 22] (DB) + 1915 Lah 86 (88, 89) [AIR V 2] : 1915 Pun Re No. 48 (DB) + 1937 Mad 223 (226) [AIR V 24] (DB) + 1934 Mad 702 (702) [AIR V 21] + (35) 1935 Mad W N 1201 (1201) + 1938 Pat 612 (613) [AIR V 25] + 1940 Rang 152 (152) [AIR V 27] (DB) + 1959 Rang 334 (335) [AIR V 26] : 1959 Rang L R 397 (FB) + 1958 Rang 461 (467) [AIR V 25] : 1958 Rang L R 521 (DB).

[5] Section 118 raises a statutory presumption in favour of there being consideration for every negotiable instrument. The presumption continues until it is rebutted and the only way it can be rebutted is by proving the contrary, viz., that the negotiable instrument was without consideration. The presumption that is raised is not in respect of the consideration mentioned in the negotiable instrument but is in favour of there being a consideration for the negotiable instrument, any consideration which is a valid consideration in law. The mere fact that the consideration mentioned in

the negotiable instrument turns out to be wrongly described does not rebut the presumption under S. 118. Where the plaintiff attempts to prove a particular consideration, the mere fact that he failed to prove such a consideration does not in any way relieve the defendant from his obligation in law to establish the contrary of the presumption. 1949 Bom 257 (257, 258, 259) [AIR V 38 C 69] : ILR (1950) Bom 335 (DB) + (58) 1958-2 Andh W R 570 (571) + 1954 Sau 42 (43) [AIR V 41 C 22] + 1943 Cal 22 (24) [AIR V 30] (DB). (Section 118 (a) does not limit the presumption only to cases of consideration as stated in the negotiable instrument. The words 'for consideration' are quite general and should be applied in their full literal sense.)

[6] Where the instrument itself mentions cash payment as the consideration for it and that is also the case of the plaintiff at the hearing, it must not be taken to be without consideration within the meaning of S. 43 of the Act simply because the defendant has succeeded in demolishing the plaintiff's case, when it appears from the evidence on record that there was consideration in a different form. 1943 Cal 22 (24) [AIR V 30] (DB) + 1955 Pat 451 (453) [AIR V 42 C 119] (DB). (Where a handnote mentions one kind of consideration but it is found that there is a consideration of a different nature the suit is not liable to be dismissed for this reason alone.) + (39) 41 Pun L R 49 (50). (When promote recites cash consideration and defendant pleads execution in lieu of rent actually due dismissal of suit is improper.) + 1936 Pat 498 (498, 499) [AIR V 23] (DB).

[See 1934 All 1068 (1069) [AIR V 21].]

[7] A defendant may discharge the burden of proof placed upon him under S. 118 (a), either by producing definite evidence, showing that consideration had not passed, or, by relying upon facts and circumstances of the case, and also by referring to the flaws in the evidence of the plaintiff and may then contend that the presumption has been rebutted. 1960 Punj 509 (504) [AIR V 47 C 182] (DB) + 1959 Andh Pra 570 (573) [AIR V 46 C 107] (DB). (The inequality of position between the borrower and the lender may also be a circumstance which helps the borrower to rebut the presumption under S. 118. AIR 1935 Mad 769, *Foll*) + (54) Madh B L J 1954 S C R 448 (447).

[8] Where the plaintiff himself sets up a case destroying the presumption by pleading facts contrary to the plain tenor of the promissory note, then it is impossible for the plaintiff to take recourse to the presumption and he must prove the consideration. 1957 Madh B 82 (83) [AIR V 44 C 35] (AIR 1920 Nag 187 and AIR 1938 Nag 130, *Dissenting from*) + 1957 Raj 139 (160) [AIR V 44 C 62] : ILR (1957) 7 Raj 531 (DB). (Plaintiff, who pleads a consideration different from the one evidenced by the negotiable instrument has to prove that such a document was for good consideration. A I R 1915 Lah 86 (2), AIR 1923 All 214 and A I R 1928 Mad 773, *Id. on.*) + 1952 Nag 308 (310) [AIR V 39] : ILR (1953) Nag 233 (13B).

[9] A mere admission that the actual consideration was different from that described in

**Section 118 — Note 2 (contd.)**

the contract does not shift the burden of introducing evidence on the payee. 1936 Nag 130 (132) [A I R V 23] : I L R 1936 Nag 142\* 1930 Nag 187 (188) [AIR V 17]. (Part of consideration not paid in cash as stated in pronote.)

[10] Where in a suit on the basis of a promissory note the defendant admits execution of the suit pronote but denies a part of the consideration, the presumption under S. 118 (a) would come into play and the burden of proof of showing that the pronote was not supported for a part of the consideration would lie on the defendant. But if the plaintiff in his reply avers that no cash consideration passed under the suit pronote and that the same was executed in satisfaction of a debt due on a previous pronote which fact is denied by the defendant in his rejoinder, these circumstances are sufficient enough to rebut the presumption under S. 118 (a) and would have the effect of shifting the onus of proof with respect to the passing of consideration on the plaintiff and the plaintiff should prove the passing of consideration to the extent disputed by the defendant. 1956 Mys 30 (31) [AIR V 43 C 10] : ILR (1955) Mys 641.

[11] Suit on pronote — Plaintiff's allegation in plaint inconsistent with plaintiff's agent's statement with regard to consideration—Onus shifts to plaintiff. 1921 Lah 148 (149) [A I R V 8].

[12] Applying the definition of 'disproved' in Evidence Act to the principle behind the presumption in S. 118 (a) the principle comes to this. The Court shall presume a negotiable instrument to be for consideration unless and until after considering the matters before it, it either believes that consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. 1959 Raj 1 (4, 5) [AIR V 46 C 1] : I L R (1958) 8 Raj 717 (FB).

[13] Presumption under S. 118 (a) cannot be invoked against persons not parties to instrument — In such cases ordinary common law rule applies and parties seeking to enforce claims under it should establish that it was for good consideration. 1960 Punj 500 (504) [AIR V 47 C 182].

[14] In a suit on a negotiable instrument, except where there is an inconsistency between pleading and proof, it is not correct to ignore the statutory presumption under S. 118 on the ground that such presumption loses its value when evidence is led by both the parties. (54) ILR (1954) 1 Cal 134 (137). (9 Ind Cas 79 (Mad), *Dissented from.*)

[15] Where the Court has come to the conclusion that the evidence of the maker of the negotiable instrument as to failure of consideration is untrustworthy and also to the conclusion that the evidence of the plaintiff fails to establish the consideration that is alleged or relied upon by him, the Court must take the third step also namely whether on a consideration of all the matters before it, it is of opinion

that consideration has been disproved and there is no question of the Court not taking this third step and decreeing the suit after taking only these two steps on the basis of the presumption of consideration. It must, as the Evidence Act stands, and as the words 'shall presume' and 'disproved' are defined in it, take this final step. The correct position in a case of this kind is that where both parties have led their entire evidence, the matter certainly rests on such evidence. It would, however, not be correct to say that it does not rest upon presumption at all, for the Court cannot forget the presumption. In order to arrive at that conclusion, it will have to consider all the matters before it and then decide whether it believes that consideration does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. 1959 Raj 1 (4, 5) [AIR V 46 C 1] : I L R (1958) 8 Raj 717 (FB). (AIR 1957 Raj 159, *Foll.*)

[See also 1960 Orissa 172 (173) [A I R V 47 C 57] : ILR (1960) Cut 295 (DB). (When both sides have adduced evidence about the passing of consideration, the question ultimately depends upon appreciation of that evidence.)]

[16] Suit on pronote — Parties going into evidence on question of consideration as to pronote — Court discrediting evidence regarding passing of consideration — Presumption under S. 118 (a) does not arise. (10) 8 Mid L Tim 463 (464)+1915 All 228 (228) [AIR V 2\* 1935 Oudh 41 (44) [AIR V 22] : 10 Luck 423 (DB)].

[See 1923 All 214 (216) [AIR V 10] (DB).]

[17] Under S. 114, Evidence Act, the Court has unfettered discretion to presume a fact, as proved until it is disproved or ignore such a presumption and call for proof of it. But when the statute requires, as in the case of S. 118 of the Negotiable Instruments Act that the Court shall presume a fact the Court has no option left, and it has to treat the fact as proved, until the party interested in disproving it has led evidence in support of its non-existence. 1960 Punj 500 (503) [AIR V 47 C 182] (DB) \* 1958 All 403 (404) [(S) A I R V 43 C 142] : ILR (1956) 2 All 347 (FB).

[18] (Per majority) : The presumption mentioned in cl. (a) of S. 118, Negotiable Instruments Act, can be invoked in insolvency proceedings where an alleged debt against insolvent is called in question by the official receiver or by a creditor or by the insolvent. 1958 All 403 (405, 411 and 412) [(S) A I R V 43 C 142] : ILR (1956) 2 All 347 (FB).

[See also 1958 All 54 (66) [AIR V 45 C 20]. Admission of debt due under pronote by insolvent — Proof of passing of consideration is not necessary.]]

[19] A presumption as to receipt of consideration, arising from a debtor's signature on a pronote can only be available against that debtor personally and cannot be invoked against the Official Receiver or a creditor in insolvency proceedings against the debtor. 1928 All 380 (381) [AIR V 15] (DB).

[20] Notwithstanding S. 118 (a) the burden of proving the receipt of consideration by an



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insolvent in respect of promote on which a claim in insolvency is based, is on the claimant and not on the Official Assignee. 1932 Sind 197 (198) [AIR V 19] : 26 Sind L R 279.

[21] Assignee substituted in place of holder of promote in schedule of creditors after notice to holder — Subsequent assignee from holder alleging that prior assignment was only for collection and that he was the real assignee — Burden of proof lies on such subsequent assignee. 1934 Mad 292 (292) [AIR V 21] (DB).

[22] Circumstances tending to make it doubtful that consideration passed under the negotiable instrument coupled with a denial on the part of the maker of the instrument would suffice to deprive the creditor of the benefit of the presumption in insolvency proceedings and require him to prove by evidence that consideration did actually pass. 1950 All 403, 406, 412 (S) [AIR V 43 C 142] : 11 R (1956) 2 All 347 (FB).

[23] A distinction has to be made between the liability on the instrument and liability for the consideration thereof for purpose of applying the presumption under S. 118. 1947 Mad 213, 214 [AIR V 34 C 109] : 11 R (1947) Mad 471 (DB). Joint Hindu family — Decree obtained against father alone on basis of promote and not on basis of debt — Decree can be executed against son's share under pious obligation rule provided decree debt in its inception was not illegal or immoral.

[24] In a suit on a Shadjog hundi it is open to the defendant to show that there was no consideration or that the consideration was illegal irrespective of the question whether such hundi is a negotiable instrument attracting the presumption under S. 118 (a). When he has pleaded that the consideration is illegal he has a right to satisfy the trial Court about the truth of his plea even if it involves reopening of the accounts in settlement of which the hundi is alleged to have been executed. 1950 Ajmer 54 (55) [AIR V 37 C 69].

[25] Post-dating of a promissory note does not denote "per se" that there is no consideration because consideration can be paid at any time and also when the promissory note is originally executed and need not necessarily be left over to be paid on the date which the promissory note bears. 1952 Nag 308 (310) [AIR V 29] : 11 R (1953) Nag 233 (DB).

[26] The presumptions contained in cls. (a) and (b) of S. 118 can be separately drawn. The two presumptions need not be drawn simultaneously and if one of the presumptions is displaced, the other is not also necessarily displaced. 1952 Nag 308 (310) [AIR V 29] : 11 R (1953) Nag 233 (DB).

[27] Section 118 no doubt raises a presumption that every negotiation of a promissory note is for consideration, but in order to raise such a presumption it is necessary to establish that the promissory note was in fact negotiated. 1957 Nag 65 (70) [AIR V 44 C 21] : 11 R (1958) Nag 850 (DB).

[28] A transfer of a negotiable instrument by endorsement must be presumed to be for consideration. 1919 Oudh 16 (17, 18) [AIR V

6] : 23 Oudh Cas 91 + 1927 Lah 864 (865) [AIR V 14].

[29] Where a defendant to a suit on promissory note admits the thumb-impression on the note but sets up fraud which he does not substantiate and there is no evidence for the defence, the Court is bound under S. 118, to draw a presumption that the note was for consideration. It is wrong to place the burden of proving the passing of consideration on the plaintiff in such a case and he is not bound to produce any such evidence. (41) 1941 Oudh W N 1161 (1163).

[See however 1953 Oudh 394 (394) [AIR V 20].

[30] Where the Court after consideration of the entire evidence records a finding as to the consideration for the promote, the finding is not one based on mere presumption under S. 118 and has to be accepted. 1955 All 509 (510) [AIR V 22] : 57 All 895 (DB).

[31] In the case of the transfer of Government promissory notes to which the Negotiable Instruments Act apply, the onus is in the first instance on the transferor to establish that the transfer was without consideration. (10) 12 Cal L Jour 470 (472, 473) (DB).

[32] Where a promissory note is executed by one who had recently become a major and who is living with his father in the joint family and who has been initiated into the mysteries of wine and women by the creditor who himself is involved and is unable to pay his debts, apart from the technical rule laid down in S. 118 of the Negotiable Instruments Act the ordinary presumption that a negotiable instrument has been executed for consideration is so much weakened that a clear denial by the executant as to the receipt of the consideration would be sufficient to shift the burden of proof and throw upon the creditor the obligation of satisfying the Court that he has in fact paid the consideration in full. 1943 All 90 (92) [AIR V 30] : 11 R (1943) All 163 (DB) + (96) 20 Bom 367 (370) (DB) + 1916 Mad 862 (863) [AIR V 3] (DB) + 1916 Mad 278 (280) [AIR V 3] (DB).

[See however 1955 Lah 599 (602) [AIR V 22] : 17 Lah 107 (DB). (The mere fact that debtor is profligate young man and creditor is money-lender does not rebut presumption under S. 118 so as to shift burden of proof on to the creditor.)]

[33] Promissory note in suit not negotiable instrument — Presumption under S. 118 does not apply — Executant defendants pleading total or partial absence of consideration — Plaintiff must prove payment. 1925 Lah 272 (272) [AIR V 12] (DB) + 1914 Lah 100 (101) [AIR V 1] + 1932 Pat 324 (325) [AIR V 19]. (Name of payee not mentioned in promote.)

[34] Minor's bond being void is not negotiable instrument and presumption under S. 118 cannot arise in case of a contract by minor. 1938 Oudh 14 (15) [AIR V 25].

[35] Suit on promote for large sum — Defence of minority at time of execution — Minority proved — Suspicious circumstances — Transaction not entered in the creditor's accounts — Held, Court was justified in holding against

**Section 118 — Note 2 (contd.)**

presumption laid down in S. 118 (a) and (b). 1930 Oudh 108 (109) [AIR V 17] (DB).

[36] Presumption as to consideration may in case of promissory note executed by father (Hindu) also bind son. But if document is proved to be false against father, no presumption arises. 1917 Mad 169 (175) [AIR V 4] (DB).

[37] The mere existence of antecedent debt is consideration within the meaning of S. 118. (13) 15 Bom L R 333 (337, 338).

[38] Person who executes hundi, must pay money or prove want of consideration. The onus is laid upon person who promises to pay. (10) 1910 Pun L R No. 24, p. 58 (59)\* 1920 Lah 295 (297) [AIR V 7] : 1 Lah 429 (DB). (Shahjog hundi.) \* 1923 Nag 62 (62) [AIR V 10].

[39] In a suit to recover a debt though it is for the plaintiff to prove consideration, if a promissory note is evidence of the debt, the presumption under S. 118 (a) will arise. 1940 Sind 217 (218) [AIR V 27] : ILR (1940) Kar 342 (DB).

[40] No presumption as to quantum of consideration can arise either under S. 118 or under S. 114, Evidence Act. Recital in that respect is the only criterion. Probative force on the recital varies according to circumstances. Doubt as to honesty of transaction makes it weak. 1935 Mad 769 (773) [AIR V 22] : 58 Mad 841 (DB).

[41] Where in case under Encumbered Estates Act the debtor pleads that amount of loan mentioned in pro-note executed by him includes interest also, burden lies upon him to prove it. 1942 Oudh 332 (333) [AIR V 29] : 17 Luck 677 (DB).

[42] Where a promissory note was given in consideration of a sum of money, it is a question of fact in each case whether the sum of money was given as a loan or not as a loan. In the absence of all evidence the presumption is that it was given by way of a loan, and there is a further presumption that the promissory note was given in conditional payment of the loan. 1943 All 220 (227) [AIR V 30] : ILR (1943) All 610 (FB).

[43] Suit on pro-note — Plea that defendant had affixed signature on blank paper and that there was no consideration — Trial Judge throwing burden of proof on plaintiff and dismissing suit — Held that Court ought to have made presumption that pro-note was made for consideration and erred in throwing burden of proof on plaintiff. 1932 All 164 (166) [AIR V 19] : 54 All 375.

[44] Suit on promissory note — Defendant denying execution and thumb-mark not proved to be his — No proof of loan can be allowed aliunde. 1940 Lah 329 (331, 332) [AIR V 27].

[45] The presumption that pro-note was for consideration will not necessarily apply in criminal trial and prosecution must prove promissory note was in fact executed for consideration and that accused committed perjury in saying that they were without consideration. 1920 All 242 (242) [AIR V 7] : 22 Cri L Jour 54.

[46] Suit on pronote reciting cash consideration — Plaintiff undertaking to prove that part of consideration was paid in cash and part in some other way but failing to prove payment of latter part — Plaintiff's claim as to latter part of consideration must fail. 1924 All 256 (259) [AIR V 11] (DB).

[47] Recital of consideration in pro-note false. — Burden of proving consideration as against maker lies on holder — More so as against third parties. 1928 Mad 773 (775) [AIR V 15] (DB).

[48] Where executrix of promissory note admits that she was executing it for sum remaining due on previous note executed by her, creditor need not produce evidence regarding previous transactions. Burden shifts on her to disprove existence of previous promissory note. 1938 Nag 294 (295) [AIR V 25].

[49] In suit on promissory note, the evidence as to earlier note is not necessary when the execution of note in suit and payments of interest on it are satisfactorily proved — The burden of proving want of consideration lies on defendant who cannot be allowed to rely upon weakness of evidence adduced by plaintiff. (11) 12 Ind Cas 861 (862) (Low Bur).

[50] Where lower Court has not taken presumption under S. 118 (a) into account, decision as to consideration is vitiated by failure to consider presumption of law. 1935 All 410 (411) [AIR V 22].

[51] When promissory note is in creditor's possession with no mark upon it to show that it is discharged, burden of proof is on debtor to show discharge. 1934 Rang 358 (361) [AIR V 21] (DB).

[52] So far as pro-notes are concerned S. 118 which only applies when some question of consideration arises, is modified by S. 12 of Punjab Debtors' Protection Act. 1942 Lah 16 (18) [AIR V 29] : ILR (1943) Lah 53 (DB).

[53] Section 118 raises presumption only regarding existence of consideration and does not presume that consideration of promissory note was advanced for legal necessity and burden of proving legal necessity rests on plaintiff making advance. 1935 Nag 127 (128) [AIR V 22] : 31 Nag L R 243.

**3. Clause (b). —** [1] If a promissory note is shown to be antedated, no presumption arises that it was executed on the date it bears on its face. 1917 Mad 169 (174) [AIR V 4] (DB).

[2] The two presumptions contained in cls. (a) and (b) of S. 118, Negotiable Instruments Act, need not be drawn simultaneously but can be drawn separately. If, therefore, one of the presumptions is displaced, the other need not necessarily be also displaced. 1952 Nag 308 (310) [AIR V 39] : 1 L R (1953) Nag 233 (DB).

**4. Clause (e). —** [1] When there is no evidence as to the order in which indorsements on note were made, statutory presumption is that they were made in order in which they appear thereon. 1918 Mad 344 (345) [AIR V 5] (DB).

[2] Under S. 118 (e), the Court is not required to make the presumption that a

**119. Presumption on proof of protest.**

In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

**120. Estoppel against denying original validity of instrument.**

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

**Section 118 -- Note 4 (contd.)**

subsequent endorsement was made on a subsequent date. If the Judge thinks that certain circumstances exist justifying his not raising the presumption, there can be no grievance against his procedure. 1954 Ajmer 8 (2) (7) [AIR V 41 C 8].

5. Clause (f).—[1] Where plaintiff sues for money advanced on oral contract and sets up a case that defendant had subsequently executed promissory note as collateral security, but that that note had been lost and the Court finds that money was advanced to defendant, Court cannot infer that promissory note must have been executed on insufficient stamp. (35) 1935 All L Jour 1140 (1141).

[2] *Hundi* lost—Presumption is that it is duly stamped and that the stamp was duly cancelled. 1930 Sind 4 (8) [AIR V 17].

6. Clause (g).—[1] Onus of proving that holder is not in fact holder in due course is on person challenging holder's right. 1924 Lb 462 (463) [AIR V 11] (DB) + 1940 Rang 170 (171) [AIR V 27].

[2] Endorsee from payee of *hundi* is presumed, until contrary is proved, to be holder in due course, by reason of S. 118 (g) and is unaffected by absence or failure of consideration as between drawer and payee. 1914 Bom 136 (136) [AIR V 1] (DB).

[3] The presumption under clause (g) is not conclusive and is often very easily shifted. The presumption will stand rebutted if it is shown by the maker of the instrument that it had been obtained by means of fraud, or an offence, or for unlawful consideration, or that the transferee of it had sufficient cause to believe that some defect existed in the title of the transferor. 1933 All 754 (755) [AIR V 20] (DB).

[4] Negotiable instrument obtained by fraud and endorsed to holder—No presumption that holder is a holder in due course arises—Holder has to prove that he is holder for value and that he obtained instrument before it became payable and without having cause to suspect endorser's title 1928 Mad 1238 (1241) [AIR V 15] (DB).

[5] The proviso to S. 118 (g) must be kept in view when reading S. 120 which created an estoppel against denying original validity of the instrument. If fraud is alleged and can be established no such estoppel arises and the defendants should be given an opportunity of establishing their allegation. 1952 Punj 296 (297) [AIR V 39] (DB).

[6] Post-dated cheque by A in favour of B in return for some consideration—No consi-

deration passing—B selling cheque to C—Fraud between B and C not proved—*Held*, that A could not rely upon S. 118 (g) in order to shift the burden of proving that the plaintiff was a holder in due course. There was nothing on record to show that the plaintiff was not *bona fide* endorsee of cheque. No bad faith and no guilty knowledge of defect in title of B had been brought home to plaintiff. 1937 Oudh 155 (156) [AIR V 24]; 12 Luck 159.

[7] Where endorsee has no sufficient cause to believe that there was any defect in title of person from whom he derived title S. 118 will raise a presumption in his favour that he is a holder in due course and that the endorsement was for consideration. 1924 Pat 521 (522) [AIR V 11].

[8] Promote obtained for unlawful consideration—Onus is on holder to prove that he is holder in due course and for consideration. 1927 Lab 137 (138) [AIR V 14].

[9] Promote in favour of Company—Endorsement by Branch Manager—Presumption is that the endorsee is a holder in due course—It is for the executant defendant to prove that the Branch Manager had no authority to endorse and that the plaintiff was not a holder in due course. 1959 Mys 36 (37, 38) [AIR V 46 C 13]; 1 L R (1958) Mys 275.

[10] Promissory note payable on demand—Endorsement after discharge—Endorsee not aware of discharge or demand—*Held*, that endorsee must be deemed to be holder in due course. 1936 Mad 879 (880) [AIR V 23].

**Section 119 -- Note 1**

[1] Under S. 119, Negotiable Instruments Act, a Court is entitled to presume dishonour if there is a proper protest. A mere entry by a notary public of the words "noted for non-payment" without giving the date of dishonour and in the absence of a certificate of protest would not raise presumption. 1919 Mad 179 (180) [AIR V 6] (DB).

**Section 120 -- Note 1**

[1] Sections 120 and 121 enact a rule of estoppel against denying the original validity of the instrument in the one case and the capacity of the payee to endorse in the other and do not relate to the question who is entitled to sue on the instrument and can thus be regarded as the creditor under it. 1941 Mad 321 (323) [AIR V 28]; 1 L R (1941) Mad 248 (DB).

[2] The words "suit thereon" in Ss. 120 and 121 clearly show that the proceeding intended to be denoted by these words is a pro-

**121. Estoppel against denying capacity of payee to indorse.**

No maker of a promissory note and no acceptor of a bill of exchange \**[payable to order]* shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

[a] *Substituted* for the words "payable to, or to the order of, a specified person", by the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919), S. 5.

**122. Estoppel against denying signature or capacity of prior party.**

No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

**Section 120 — Note 1 (contd.)**

ceeding initiated by some one who was entitled to sue or take legal steps to recover the money due on a negotiable instrument, that is to say by the promisee or payee, and they cannot apply to proceedings initiated by the maker or promisor for relief under S. 19, Madras Agriculturists' Relief Act. 1940 Mad 52 (53) [AIR V 27].

[3] The section only prevents the maker of the note from denying the validity of the instruments as originally made or drawn. It does not bar any defence which is independent of a plea that the instrument as originally made or drawn was invalid. 1942 Mad 169 (169) [AIR V 29] (DB). (Suit by endorsee of promissory note — Maker is not barred by S. 120 from pleading or setting up defence open to promisor under Madras Act 4 of 1938.)

[4] The endorser of a negotiable instrument is estopped as against the endorsee from disputing the validity of the instrument. 1919 Mad 262 (263) [AIR V 6] : 42 Mad 470 (DB).

[5] A negotiable instrument executed by a minor is void and the minor is not precluded by S. 120 from denying the validity of the note on the ground of want of capacity to contract. The specific provision contained in S. 120 as to estoppel is clearly subject to the general rule enacted in the earlier S. 26 as to capacity to contract. (1929) 117 Ind Cas 133 (134) (DB) (Mad).

[6] Though S. 120 precludes the maker of a promissory note from denying the validity of the note, where money is not advanced as a simple loan unconditionally upon the promissory note, but is advanced after the note had been executed and on certain conditions previously agreed upon, the promisor is entitled to prove circumstances in repudiation of his liability. 1933 Lah 456 (457) [AIR V 20] (DB).

[7] The condition precedent to the application of S. 120 is that there must be a properly stamped bill of exchange before the Court at which the Court is entitled to look. 1926 All 359 (360) [AIR V 13] : 48 All 332.

[8] Drawer drawing post-dated cheque in favour of payee—No consideration from payee to drawer—Payee selling cheque to third person for consideration — No fraud or want of *bona fides* proved on part of purchaser—Purchaser suing to recover money on cheque — Fact that no consideration passed between drawer and payee held did not affect right of purchaser to sue in view of S. 120. 1937 Oudh 155 (156) [AIR V 24] : 12 Luck 139.

[9] Section 120 is confined to suits by a holder in due course and a holder in due course does not include the payee of negotiable instrument payable to bearer. 1914 Upp Bur 3 (4) [AIR V 1] : 2 Upp Bur Rul 13.

[10] Where one of two joint promisors admits execution it is not open to him to plead material alteration of note. 1915 Mad 425 (425, 426) [AIR V 2].

[11] Proviso to S. 118 (g) must be kept in view when reading S. 120 which creates an estoppel against denying the original validity of the instrument. If fraud can be established no such estoppel arises. Where fraud has, in fact, been alleged in a case it cannot be said that the defendants have no defence whatever and that they should not be given an opportunity of establishing the allegation of fraud. 1952 Punj 296 (297) [AIR V 39] (DB).

**Section 121 — Note 1**

[1] The words "suit thereon" in S. 121 denote a proceeding initiated by someone who was entitled to sue or take legal steps to recover the money due on a negotiable instrument, that is to say, by the promisee or payee and cannot apply to proceedings initiated by the maker or promisor for relief under S. 19, Madras Agriculturists Relief Act (4 of 1938). 1940 Mad 42 (53) [AIR V 27].

[2] Beyond special rules of evidence and presumptions e.g. those enacted in Ss. 120 to 122, 43, 44 and Ss. 118 and 119 ordinary principles of substantive law or rules of evidence will apply to claims relating to negotiable instrument especially when they arise not between promisor and promisee or drawer and drawee but between promisee or drawee on one hand and third person on the other. In a suit on pronote the promisor cannot plead that somebody other than payee is entitled to sue but as between payee and third persons parol evidence is admissible to show that payee is only benamidar for another. Hence a suit for declaration that a pronote under which B is payee is liable to be attached in execution of a decree against A on the ground that note is taken benami in name of B for A is maintainable. 1935 Mad 181 (183) [AIR V 22] : 58 Mad 693 (FB).

**Section 122 — Note 1**

[1] Promissory note executed by A to B payable on demand—B endorsing it to C, a bank, for valid consideration and taking fixed

## CHAPTER XIV OF CROSSED CHEQUES

### 123. Cheque crossed generally.

Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

### 124. Cheque crossed specially.

Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

### 125. Crossing after issue.

Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

### 126. Payment of cheque crossed generally.

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

#### Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

### 127. Payment of cheque crossed specially more than once.

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

### 128. Payment in due course of crossed cheque.

Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they

#### Section 122 — Note 1 (contd.)

receipt—Suit by C on note — Allegation of A that note was not executed by him and was forged found true—*Had* neither this fact nor C's going into liquidation will help B in claim on note made against him. 1935 Lah 825 (828) [AIR V 22] (DB).

#### Section 123 — Note 1

[1] The negotiability of a cheque can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. The only effect of crossing is that the drawee bank must not pay it otherwise than to any banker if it is crossed generally or to the particular banker if it is crossed

specially. 1952 All 590 (591) [AIR V 39]; 1 L R (1951) 2 All 674 (DB).

#### Section 128 — Note 1

[1] The negotiability of a cheque can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. The only effect of crossing a cheque is, that the drawee bank must not pay it otherwise than to any banker if it is crossed generally, or to the particular banker if it is crossed specially. 1952 All 590 (591) [AIR V 39]; 1 L R (1951) 2 All 674 (DB).

[2] Any banker other than the drawee bank can pay a crossed cheque which is not made not negotiable. 1952 All 590 (591) [AIR V 39]; 1 L R (1951) 2 All 674 (DB).

would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

### 129. Payment of crossed cheque out of due course.

Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

### 130. Cheque bearing "not negotiable".

A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

### 131. Non-liability of banker receiving payment of cheque.

A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

<sup>a</sup>[*Explanation.* — A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.]

[a] *Inserted by the Negotiable Instruments (Amendment) Act, 1922 (XVIII of 1922), S. 2.*

#### Section 129 — Note 1

[1] The phrase "the true owner of the cheque" undoubtedly includes the payee. To this extent a right has been conferred by section 129 on the payee to maintain an action against the bank. But this right has been specially created by the statute in the particular circumstances mentioned in the section. The section does not confer a right on the payee in general to enforce payment of a cheque against a bank. 1953 All 637 (640) [AIR V 40 C 318] : 1 L R (1954) 1 All 268 (DB).

#### Section 131 — Note 1

[1] A banker, to escape the liability for converting the goods belonging to the true owner, must discharge the burden of establishing that he received payment on behalf of a customer of his of a cheque not belonging to the customer but to someone else in good faith and without negligence. Negligence is a question of fact. 1946 Bom 482 (483, 484) [AIR V 33 C 100] : 1 L R (1947) Bom 236. (References about new customer given and no suspicious circumstances attendant upon opening account — Bank held not guilty of negligence for failing to make any further enquiries and hence entitled to protection under S. 131.) \* 1932 Rang 6 (8) [AIR V 19] : 9 Rang 585 (DB).

[2] Whether a bank is guilty of negligence depends upon facts of each case. The onus of proving good faith and absence of negligence as contemplated by S. 131 is on the banker claiming protection under the Act. 1958 Ker 316 (317) [AIR V 45 C 112] : 1 L R (1957) Ker 913 (DB) \* 1956 Cal 399 (409) [(S) AIR V 43 C 122].

[3] The test of negligence is whether the transaction of paying in any given cheque was so out of the ordinary course that it ought to have aroused doubt in the banker's mind and caused him to make enquiry. 1932 Rang 6 (8) [AIR V 19] : 9 Rang 585 (DB) \* 1948 Bom 1 (5) [AIR V 35 C 1] : 1 L R (1947) Bom 643.

[4] The question of negligence depends upon the facts and circumstances of each case. 1948 Bom 1 (4) [AIR V 35 C 1] : 1 L R (1947) Bom 643.

[5] A draft drawn by a branch of a Bank on its head office or vice versa is not a cheque or bill of exchange and hence will not entitle a bank making payment to protection under S. 131. 1948 Bom 1 (3) [AIR V 35 C 1] : 1 L R (1947) Bom 645.

[6] In the case of a demand draft drawn by a bank upon its branch there is no statutory protection as such demand draft is not a "cheque." In the absence of statutory protection the common law must apply and any party converting to its own use or on behalf of its clients the proceeds of such a draft would be liable to the true owner. 1948 Bom 1 (4) [AIR V 35 C 1] : 1 L R (1947) Bom 645.

[7] The plea of negligence of true owner is not available to the collecting bank. 1948 Bom 1 (6) [AIR V 35 C 1] : 1 L R (1947) Bom 643.

[8] Section 131 protects a banker who in good faith and without negligence receives payment for a customer of a crossed cheque when the title to the cheque proves defective. 1952 All 590 (593) [AIR V 39] : 1 L R (1951) 2 All 674 (DB).

[9] In an action in conversion against the collecting bank where the defence is based on

**\*[131A. Application of Chapter to drafts.]**

The provisions of this Chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque.]

[a] *Added* by the Negotiable Instruments (Amendment) Act, 1947 (XXXIII of 1947), S. 2. [18-4-1947].

## CHAPTER XV OF BILLS IN SETS

**132. Set of bills.**

Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception.* — When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

**133. Holder of first acquired part entitled to all.**

As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

## CHAPTER XVI OF INTERNATIONAL LAW

**134. Law governing liability of maker, acceptor or indorser of foreign instrument.**

In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in

**Section 131 — Note 1 (contd.)**

S. 131 the endorsement becomes material as an element in determining whether the bank had acted without negligence. 1955 Mad 402 (406) [(S) AIR V 42 C 107] : I L R (1955) Mad 411 (DB).

[10] When in an action in conversion a defence is raised under S. 131 the primary question for determination is whether in the matter of realisation of the cheque the collecting Bank had acted without negligence—Negligence not merely at the stage of encashment but at the prior stages from the receipt of the cheque in question. The question whether the bank had acted with negligence in the opening of the account will be relevant under S. 131 to this extent that if the opening of the account and the deposit of the cheque are really part of one scheme as where the account itself is opened with the cheque in question or where it is put into the account so shortly after the opening of the account as to lead to the inference that it is part of it, then negligence in the matter of opening the account must be treated as negligence in the matter of realisation of the cheque. The question as to how far the two stages can be regarded as so intimately associated as to be considered as one transaction is a question of fact. 1955 Mad 402 (405) [(S) A I R V 42 C 107] : ILR (1955) Mad 411 (DB).

[11] Proof of the bank that its rules had been observed by its officers would not be an answer to a claim in conversion though that would be a material element in establishing

that the Bank had acted without negligence as required by S. 131. 1955 Mad 402 (404) [(S) AIR V 42 C 107] : I L R (1955) Mad 411 (DB).

[12] Section 131 makes it clear that when a banker receives from its customer a cheque crossed in its customer's behalf, the fact that the customer's title to the cheque is defective does not render the banker liable to the true owner. But the protection under the section is afforded only if the banker has received payment in good faith and without negligence, otherwise the bank which receives payment on a forged cheque or a cheque to which the customer has no title or only defective title, is liable in action for conversion to the true owner. 1956 Cal 399 (408) [(S) A I R V 43 C 122].

[13] Where the account of the customer was opened without obtaining a reference and without any inquiry, and where the manner in which the account was operated upon was peculiar and where the name as endorsed on the demand draft collected by the bank did not tally with the name of the customer as given in the application form and specimen signature : *Held*, that taking all these circumstances into account it must be held that the bank failed to prove that it was not guilty of negligence in collecting the amount of draft. 1948 Bom 1 (6) [AIR V 35 C 1] : I L R (1947) Bom 643.

**Section 134 — Note 1**

[1] A promissory note made in the Nizam's Dominions but unstamped and so inadmissible



all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

#### Illustration

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in <sup>a</sup>[India], and is dishonoured. An action on the bill is brought against B in <sup>a</sup>[India]. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

[a] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

### 135. Law of place of payment governs dishonour.

Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines, what constitutes dishonour and what notice of dishonour is sufficient.

#### Illustration

A bill of exchange drawn and indorsed in <sup>a</sup>[India], but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

[a] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

### 136. Instrument made, etc., out of India, but in accordance with the law of India.

If a negotiable instrument is made, drawn, accepted or indorsed <sup>a</sup>[outside India], but in accordance with the <sup>b</sup>[law of India], the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon <sup>c</sup>[within India].

[a] The words "out of British India" have been successively substituted by A. C. A. O. 1948; A. L. O. 1950 and Part B States (Laws) Act, 1951 (III of 1951), to read as above.

[b] The words "law of British India" have been successively substituted, *ibid*, to read as above. [c] The words "in British India" have been successively substituted, *ibid*, to read as above.

#### Section 134 — Note 1 (contd.)

in evidence in any of the Nizam's Courts, can be proved in a Court in British India. 1930 Mad 1004 (1008) [AIR V 17] : 53 Mad 988 (DB).

[2] Section 35 of the Indian Stamp Act has not the effect of making insufficiently stamped instruments void. Under the rules of Private International Law as embodied in S. 137 of the Travancore Negotiable Instruments Act the sanctions of S. 35 of the Indian Stamp Act were held not to be enforceable in the Courts in Travancore. Hence, an unstamped bill of exchange drawn and accepted in British India was held admissible in evidence and could be acted upon in a suit filed thereon in Travancore. ('46) 36 Trav L J 450 (439) (DB).

#### Section 135 — Note 1

[1] Goods shipped in Calcutta to firms in London before war and bills of exchange drawn on London Bank and endorsed — War declared — Ships in which goods were carried and ports to which they were destined becoming enemy ships, and enemy ports — Bill being dishonoured represented to drawer — Bills being foreign under S. 135, Law of England

applied — Owing to circumstances of war drawee held not bound to accept. 1920 Cal 604 (606) [AIR V 7] : 46 Cal 584 (DB).

#### Section 136 — Note 1

[1] There is no provision of law which requires a promissory-note executed out of British India to be stamped before it is sued on or used in Court in British India. When the holder has not done any of the things mentioned in Ss. 5 and 18, Stamp Act, the obligation to stamp the note does not arise and S. 34, Stamp Act, is no bar to its admission as evidence. ('99) 22 Mad 337 (338) (DB).

[2] Section 35 of Indian Stamp Act has not the effect of making insufficiently stamped instruments void. Under the rules of Private International Law as embodied in S. 137 of the Travancore Negotiable Instruments Act the sanctions of S. 35 of the Indian Stamp Act were held not to be enforceable in the Courts in Travancore. Hence, an unstamped bill of exchange drawn and accepted in British India was held admissible in evidence and could be acted upon in a suit filed thereon in Travancore. ('46) 36 Trav L J 450 (439) (DB).



**137. Presumption as to foreign law.**

The law of any foreign country \*[\* \* \*] regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of <sup>b</sup>[India], unless and until the contrary is proved.

[a] The words "or the State of Jammu and Kashmir" were omitted by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), S. 2 and Sch. [1-11-1956].

[b] The words "British India" have been successively substituted by A. C. A. O. 1948; A. L. O. 1950 and Part B States (Laws) Act, 1951 (III of 1951) to read as above.

**\*CHAPTER XVII****NOTARIES PUBLIC**

**138 and 139.** Power to appoint notaries public. Power to make rules for notaries public. [*Repealed by the Notaries Act, 1952 (LIII of 1952), S. 16 (w. e. f. 14.2.1956).*]

[a] Chapter XVII was added by the Negotiable Instruments Act, 1885 (II of 1885), S. 10.

**SCHEDULE.**—Enactments repealed. [*Repealed by the Amending Act, 1891 (XII of 1891), S. 2 and Sch. I.*]

**[THE] NEWSPAPER (PRICE AND PAGE) ACT, 1956****(ACT XLV of 1956)**

[The Act printed here is as on 1-10-1960]

**C O N T E N T S****SECTIONS**

1. Short title, extent and duration.
2. Definitions.
3. power to regulate prices and pages of newspapers, etc.
4. Prohibition of publication and sale

of newspapers in contravention of order under section 3.

5. Returns to be furnished by newspapers.
6. Penalties.
7. Cognizance of offences.

**STATEMENT OF OBJECTS AND REASONS**

"The regulation of the prices of newspapers in relation to their sizes appeared to be a necessity to the Press Commission mainly in order to provide the circumstances in which freedom of opinion could be very much more real than it is to-day by eliminating unfair competition and equalising opportunities for newspapers especially with smaller resources. Accordingly, one of the major recommendations of the Press Commission was that legislation be enacted empowering Government to issue from time to time a price page schedule fixing a minimum price at which papers of a particular size can be sold. The Commission also recommended that in order to ensure that the reader gets an adequate proportion of news and views and that the advertisements are not reduced in effectiveness because there are too many of them, the total space allotted to advertisements in newspapers should be restricted to a specified proportion. The consensus of opinion in the Press industry is in favour of these recommendations and there has been a general demand for their implementation. In the course of the debate on the Press Commission's Report general approval was

expressed by Parliament to the principles underlying these recommendations. The Bill seeks to implement the recommendations by conferring powers suitably for the purpose.

The scope of the Bill is restricted to newspapers which appear at intervals of not more than a week. Clause 3 of the Bill empowers Government to issue a price page schedule from time to time by making an order providing for the regulation of the prices charged for newspapers in relation to their maximum or minimum number of pages, sizes or areas and for the space to be allotted for advertising matter in relation to other matters. It is enjoined that such order shall be made with due regard to the need for reasonable flexibility with reference to the fall of news, the flow of advertisements and other matters connected with the normal working of newspapers. Similarly, provision has been made for the schedule to be drawn up in consultation with the interests concerned. The other provisions of the Bill mainly relate to procedure."

—Gaz. of Ind., 1956, Extra., Pt. II-Sec. 2, page 648.

## [THE] NEWSPAPER (PRICE AND PAGE) ACT, 1956

(ACT XLV OF 1956)<sup>a</sup>

[7th September, 1956]

*An Act to provide for the regulation of the prices charged for newspapers in relation to their pages and of matters connected therewith for the purpose of preventing unfair competition among newspapers so that newspapers may have fuller opportunities of freedom of expression.*

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1956, Extra., Part II-Sec. 2, page 648.

### 1. Short title, extent and duration.

- (1) This Act may be called THE NEWSPAPER (PRICE AND PAGE) ACT, 1956.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall cease to have effect on the expiration of a period of five years from its commencement except as respects things done or omitted to be done before the expiration thereof, and section 6 of the General Clauses Act, 1897, shall apply on the expiry of this Act as if it had then been repealed by a Central Act.

### 2. Definitions.

In this Act, unless the context otherwise requires,

- (a) "daily newspaper" means a newspaper which is published on not less than six days in a week, and includes any supplement or special edition of such newspaper ;
- (b) "newspaper" means any printed periodical work containing public news or comments on public news appearing at intervals of not more than a week.

### 3. Power to regulate prices and pages of newspapers, etc.

(1) If the Central Government is of opinion that for the purpose of preventing unfair competition among newspapers so that newspapers generally and in particular, newspapers with smaller resources and those published in Indian languages may have fuller opportunities of freedom of expression, it is necessary or expedient so to do, the Central Government may, from time to time, by notification in the Official Gazette, make an order<sup>a</sup> providing for the regulation of the prices charged for newspapers in relation to their maximum or minimum number of pages, sizes or areas and for the space to be allotted for advertising matter in relation to other matters therein.

(2) An order under this section—

- (a) may be made in relation to newspapers generally or in relation to any class of newspapers;
- (b) may contain different provisions for daily newspapers and newspapers appearing at other periodical intervals and for different classes of newspapers, and may, in particular, make separate provisions for weekly editions of daily newspapers whether appearing under the same title or not, and also for supplements or special editions of newspapers issued on special occasions;
- (c) shall be made relatable to such period of time as the Central Government may deem reasonable;
- (d) may provide for incidental or supplementary matters.

(3) An order under this section shall be made with due regard to the need for reasonable flexibility with reference to the fall of news, the flow of advertisements and other matters connected with the normal working of newspapers.

(4) Before making any order under this section, the Central Government shall consult associations of publishers, and such publishers likely to be affected by the order as it may think fit with respect to the action proposed to be taken.

[a] For the Daily Newspaper (Price and Page) Order, 1960, see G. S. R. 1250, D/- 24-10-1960 published in Gaz. of Ind., 1960, Extra., Pt. II-Sec. 3 (i), p. 675. This Order is to come into force on such date as may be notified. [Notification not issued up to 7-1-1961.]

*Note.*—The object of the Act is to eliminate unfair competition between newspapers having larger resources and those having smaller resources, by fixing the number of pages, the minimum prices and the space given to advertisements in newspapers, thus equalising opportunities. The contravention of the provisions of S. 3 is punishable under S. 6, on first conviction, with fine which may extend to one thousand rupees and on subsequent conviction with fine which may extend to two thousand rupees.

#### 4. Prohibition of publication and sale of newspapers in contravention of order under section 3.

No newspaper shall be published or sold in the territories to which this Act extends in contravention of any of the provisions of an order made under section 3.

#### 5. Returns to be furnished by newspapers.

For the purpose of verifying whether an order made under section 3 is being complied with or not, the Press Registrar appointed under the Press and Registration of Books Act, 1867, may, from time to time, direct the publisher of any newspaper to which such an order applies to furnish to him such weekly returns and statistics with respect to any of the particulars referred to in section 3 as the Press Registrar may, from time to time, require and the publisher of every newspaper shall comply with such direction.

#### 6. Penalties.

(1) If any newspaper is published or sold in contravention of section 4, the publisher of the newspaper shall, on first conviction, be punishable with fine which may extend to one thousand rupees and on any second or subsequent conviction, with fine which may extend to two thousand rupees.

(2) If the publisher of any newspaper—

(a) refuses or neglects to comply with any direction of the Press Registrar given under section 5; or

(b) furnishes or causes to be furnished to the Press Registrar any weekly returns or statistics which he has reason to believe to be false,

he shall be punishable with fine which may extend to five hundred rupees.

#### 7. Cognizance of offences.

No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing by the Press Registrar appointed under the Press and Registration of Books Act, 1867, or by any officer authorised by him in writing in this behalf.

*Note.*—For prosecution under this Act, there must be a written complaint by the Press Registrar.

# [THE] NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873

(ACT VIII of 1873)

[The Act printed here is as on 1-10-1960]

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## STATEMENT OF OBJECTS AND REASONS

"The Secretary of State having disapproved the sections (forty-four to forty-nine) of the Punjab Canal and Drainage Act (No. XXX of 1871), which provide for the imposition of a water-rate upon lands irrigable, but not irrigated, it is proposed not only to repeal those sections, but to re-enact the whole measure, making it applicable not merely to

the Punjab, but also the North-Western Provinces, Oudh, and the Central Provinces. With these exceptions, the provisions of the Bill are almost exactly similar to those of the Punjab Canal and Drainage Act. A few changes of no great importance have been made."

—Gaz. of Ind., 1872, Part V, page 651.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts XII of 1891; XVI of 1899.
- Adapted by A. O., 1937; A. C. A. O., 1948; 2 A. L. O., 1956.
- Amended in its application to —
  - (a) Punjab by Punj. Acts XIX of 1953; XXI of 1958; XXII of 1960.
  - (b) Uttar Pradesh by U. P. Acts VI of 1932; XII of 1936; XXX of 1956.
- Extended in Punjab by Punj. Acts V of 1950; XXI of 1954; V of 1957.
- Repealed in part and amended by Act IV of 1914.
- Repealed in part by Acts XII of 1873; XVI of 1874; XXXVIII of 1920.
- Repealed in part in its application to —
  - (a) Certain part of Orissa by Ori. Act XIV of 1959.
  - (b) Punjab by Act XVI of 1887.
- Repealed in Central Provinces by C. P. Act III of 1931.

## [THE] NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873

(ACT VIII OF 1873)<sup>a</sup>

[11th February, 1873.]

*An Act to regulate Irrigation, Navigation and Drainage in Northern India.*

## Preamble.

WHEREAS throughout the territories to which this Act extends, the <sup>a</sup>[State Government] is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water; and whereas it is expedient to amend the law relating to irrigation, navigation and drainage in the said territories; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1872, Pt. V, p. 651; for Reports of Select Committee, see *ibid.*, p. 747 and *ibid.*, Supplement, 1873, p. 233.

This Act has been applied with certain modifications in respect of State tube-wells—

- (a) in Punjab, by the Punjab State Tube-wells Act, 1954 (XXI of 1954), S. 4.
  - (b) in Uttar Pradesh by the United Provinces State Tube-wells Act, 1936 (XII of 1936), S. 6.
- It has been extended (a) to States merged in the State of Punjab by Punj. Act V of 1950, S. 3 and Sch. I [15-4-1950] and (b) to the transferred territories in the State of Punjab, by Punjab Act V of 1957, S. 4 and Sch. II [30-3-1957].

The Act has been *repealed* in certain parts of Orissa by the Orissa Irrigation Act, 1959 (XIV of 1959), S. 3 and Sch.

## Preamble — Note 1

[1] It cannot be urged that the Canal Act of 1873 is bad and inoperative since it was not reserved and did not receive the assent of the

President as required by Art. 289 of the Constitution. 1956 Pepsu 40 (47) [AIR V 43 C 15] (DB).

## PART I

### PRELIMINARY

#### 1. Short title.

This Act may be called THE NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873.

#### Local extent.

It extends to <sup>a</sup>[Uttar Pradesh<sup>aa</sup> and the <sup>b</sup>territories which, immediately before the 1st November, 1956, were comprised in the States of Punjab and Delhi]] and applies to all lands, whether permanently settled, temporarily settled, or free from revenue.

<sup>c</sup>[•

[a] Substituted for the original words as amended by A. O. 1937, by A. C. A. O., 1948. [aa] In respect of any State tube-well in Uttar Pradesh the provisions of this Act, except the provisions of S. 1, cls. (4) and (7) of S. 3, S. 4, S. 5 and Parts VI and VII, are to be deemed to apply in like manner as if such State tube-well were a canal within the meaning of this Act.—see U. P. Act XII of 1936, S. 6. [b] Substituted for "States of Punjab and Delhi," by 2 A. L. O., 1956 [1-11-1956]. [c] The commencement clause was omitted by the Repealing Act, 1874 (XVI of 1874).

#### 2. Repeal of Acts. [*Repealed by the Repealing Act, 1873 (XII of 1873), Section 1 and Schedule, Pt. II.*]

#### 3. Interpretation clause.

In this Act, unless there be something repugnant in the subject or context —  
"Canal."

(1) "canal" includes—

- (a) all canals, channels and reservoirs constructed, maintained or controlled by the <sup>A</sup>[State Government] for the supply or storage of water;
- (b) all works, embankments, structures, supply and escape channels connected with such canals, channels or reservoirs;
- (c) all water-courses as defined in the second clause of this section;
- (d) any part of a river, stream, lake or natural collection of water or natural drainage-channel, to which the <sup>A</sup>[State Government] has applied the provisions of Part II of this Act :

"Water-course."

(2) "water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of the <sup>A</sup>[State Government] and all subsidiary works belonging to any such channel :

"Drainage-work."

(3) "drainage-work" includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works for the protection of lands from

#### Section 1 — Note 1

[1] Act applies to private channel constructed in accordance with provisions of S. 21 of Act. (150) ILR (1950) All 780 (782).

### SECTION 3 — SYNOPSIS

#### 1. Water-course.

#### 2. Canal officer.

1. Water-course. — [1] A right over a water passage through other's property can only be acquired either from the canal authorities or by private agreement between the parties concerned. 1921 Lah 327 (328) [AIR V 8] : 22 Cri L Jour 429.

[2] If there is a previous order by a canal officer either under S. 20 or S. 21 of the Act that would make it clear that the

channel in question is a water-course as defined in the Act. But in the absence of any order under the said sections whether a particular channel is or is not a water-course is a question of fact and the decision of that question would depend upon whether the water channel is recognised as such by the people of the locality. (150) ILR (1950) All 780 (782).

2. Canal officer. — [1] The State is divided into several divisions and each division is placed in the charge of an Executive Engineer. Executive Engineer, Sangrur exercises control over the Sangrur Division. He should, therefore, be regarded as the Divisional Canal Officer of the territory within his jurisdiction for purposes of the Canal Act. 1956 Pepsu 40(47) [AIR V 43 C 15] (DB).

flood or from erosion, formed or maintained by the <sup>a</sup>[State Government] under the provisions of Part VII of this Act, but does not include works for the removal of sewage from towns :

“Vessel.”

<sup>a</sup>(4) “vessel” includes boats, rafts, timber and other floating bodies :

“Commissioner.”

(5) “Commissioner” means a Commissioner of a division, and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner :

“Collector.”

<sup>b</sup>(6) “Collector” means the head revenue-officer of a district and includes a Deputy Commissioner or other officer appointed under this Act to exercise all or any of the powers of a Collector :

“Canal-officer.”

(7) “Canal-officer” means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof :

“Superintending Canal-officer.”

“Superintending Canal-officer” means an officer exercising general control over a canal or portion of a canal :

“Divisional Canal-officer.”

“Divisional Canal-officer” means an officer exercising control over a division of a canal :

“Sub-divisional Canal-officer.”

“Sub-Divisional Canal-officer” means an officer exercising control over a sub-division of a canal :

“District.”

(8) “district” means a district as fixed for revenue purposes.

[a] Cf. definition in the General Clauses Act, 1897 (X of 1897), S. 3 (63). [b] Cf., *ibid.* S. 3 (11).

#### STATE AMENDMENTS

##### PUNJAB

(i) In clause (1) of S. 3, after sub-clause (d), *add* the following, namely :—

“(e) a field drain for purposes of section 70 of this Act.”

(ii) after clause (8) of S. 3, *add* the following clauses, namely :—

“(9) ‘Shareholder’ means a person who is interested in the land which is irrigated or likely to be irrigated by a canal and also includes a person who is interested in a field drain.

(10) ‘Field drain’ includes drains, escape channels and other similar works formed or maintained by landowners themselves.

(11) ‘Culturable commanded area’ means that portion of the culturable irrigable area which is commanded by flow irrigation from an irrigation channel or outlet.”

— Punjab Act, XXI of 1958, S. 2 [10-7-1958].

##### UTTAR PRADESH

(i) The provisions of clauses (4) and (7) of section 3 are not applicable in respect of any State tube-well in Uttar Pradesh—U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

(ii) In cl. (8) of S. 3, for the words “a Deputy Commissioner or other” *substitute* “an”.  
— U. P. Act XXX of 1956, S. 3 & Sch. II [1-10-1956].

#### 4. Power to appoint officers.

The <sup>a</sup>[State Government] may from time to time declare, by notification<sup>a</sup> in the Official Gazette, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

All officers mentioned in section 3, clause (7), shall be respectively subject to the orders of such officers as the <sup>a</sup>[State Government] from time to time directs.

[a] See the Punjab Rules and Orders.



## STATE AMENDMENT

## UTTAR PRADESH

The provisions of section 4 are not applicable in respect of any State tube-well in Uttar Pradesh.  
—U. P. Act XII of 1938, S. 6 [w. e. f. 13-3-1937].

## PART II

## OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES

**5. Notification to issue when water-supply is to be applied for public purposes.**

Whenever it appears expedient to the <sup>A</sup>[State Government] that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the <sup>A</sup>[State Government] for the purpose of any existing or projected canal or drainage-work, the <sup>A</sup>[State Government] may, by notification<sup>a</sup> in the Official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

[a] See the Punjab and the Uttar Pradesh Rules and Orders.

## STATE AMENDMENT

## UTTAR PRADESH

The provisions of section 5 are not applicable in respect of any State tube-well in Uttar Pradesh.  
—U. P. Act XII of 1938, S. 6 [w. e. f. 13-3-1937].

**6. Powers of Canal-officer.**

At any time after the day so named, any Canal-Officer, acting under the orders of the <sup>A</sup>[State Government] in this behalf, may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

## STATE AMENDMENTS

## PUNJAB

For the words "so named" the words "named in a notification under section 3 of the Punjab State tube-well Act, 1954" and for the words "such application or use of the said water" the words "the application or use of underground water for the purpose of a State tube-well" shall be deemed to be substituted.  
—Punjab Act XXI of 1954, S. 4.

## UTTAR PRADESH

(i) For the words "day so named" the words "commencement of the Uttar Pradesh State tube-wells Act, 1936" and for the words "such application or use of the said water" the words "the application or use of underground water for the purpose of a State tube-well" shall be deemed to be substituted.

(ii) In respect of any State tube-well in Uttar Pradesh reference to a 'canal-officer' in this section shall be deemed to be a reference to a 'tube-well officer'.

—U. P. Act XII of 1936, S. 6 and Sch., item I [w. e. f. 13-3-1937] as amended by U. P. Act IV of 1954.

**7. Notice as to claims for compensation.**

As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that the <sup>A</sup>[State Government] intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section 8 may be made before him.

**8. Damage for which compensation shall not be awarded.**

No compensation shall be awarded for any damage caused by—

(a) stoppage or diminution of percolation or floods;

## Section 6 — Note 1

[1] Where the construction of the Raya Branch Tail Distributory of the Upper Chenab canal caused the flood water to go to the plaintiff's property in the high floods of 1917, and thereby caused them serious damage. Held that action of the Canal Officers

in constructing this channel came under S. 6 of Act 8 of 1873, and whether that action was wise or unwise, any suit for damages consequent thereon must be brought within 90 days of the date of damage. 1924 Lah 192 (1) (192) [AIR V 11] : 4 Lah 432 (DB).

- (b) deterioration of climate or soil;
- (c) stoppage of navigation, or of the means of drifting timber or watering cattle;
- (d) displacement of labour.

**Matters in respect of which compensation may be awarded.**

But compensation may be awarded in respect of any of the following matters :—

- (e) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground, in use at the date of the said notification;
- (f) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification;
- (g) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification;
- (h) damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the <sup>a</sup>Indian Limitation Act, 1877, Part IV;
- (i) any other substantial damage, not falling under any of the above clauses (a), (b), (c) or (d), and caused by the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation, regard shall be had to the diminution in the market-value, at the time of awarding compensation of the property in respect of which compensation is claimed; and, where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual nett profits of such property caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clauses (e), (f) or (g) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against the <sup>a</sup>[State Government], except by grant or under the <sup>a</sup>Indian Limitation Act, 1877, Part IV;

and no right to any of the advantages referred to in clauses (a), (b) and (c) of this section shall be acquired, as against the <sup>a</sup>[State Government], under the same Part.

[a] See now the Indian Limitation Act, 1908 (IX of 1908).

**STATE AMENDMENTS**

**PUNJAB**

- (i) Clauses (a) and (c) and the reference thereto in clause (i), shall be deemed to be *omitted*;
- (ii) in clause (g) for the words "through any natural channel which has been used for purposes of irrigation" the words, "in any well which has been used" shall be deemed to be *substituted*;
- (iii) in the last paragraph for the words brackets and letters "clauses (a), (b) and (c)" the word, brackets and letters "clause (b)" shall be deemed to be *substituted*.

—Punj. Act XXI of 1954, S. 4.

**UTTAR PRADESH**

Same as those of Punjab.

—U. P. Act XII of 1936, S. 6 and Sch., item 2 [w. e. f. 13-3-1937].

**9. Limitation of claims.**

No claim for compensation for any such stoppage, diminution or damage shall be made after the expiration of one year from such stoppage, diminution or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

**10. Enquiry into claims and amount of compensation.**

The Collector shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant; and sections 9 to 12 (inclusive), 14 and 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51, 57, 58 and 59 of the "Land Acquisition Act, 1870, shall apply to such inquiries :

Provided that, instead of the last clause of the said section 26, the following shall be read :—"The provisions of this section and of section 8 of the Northern India Canal and Drainage Act, 1873, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded."

[a] See now the Land Acquisition Act, 1894 (1 of 1894).

**11. Abatement of rent on interruption of water supply.**

Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under section 8, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

**12. Enhancement of rent on restoration of water-supply.**

If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

**13. Compensation when due.**

All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of,

**Interest.**

and simple interest at the rate of six per cent. per annum shall be allowed on any such sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

**PART III****OF THE CONSTRUCTION AND MAINTENANCE OF WORKS****14. Power to enter and survey, etc.**

Any Canal-officer, or other person acting under the general or special order of a Canal-officer,

may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon ;

and dig and bore into the sub-soil ;

and make and set up suitable land-marks, level-marks and water-gauges ;

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal-officer ;

**Power to clear land.**

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle ;

**Power to inspect and regulate water-supply.**

and may also enter upon any land, building or water-course on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of such canal :

**Notice of intended entry into houses.**

Provided that, if such Canal-officer or person proposes to enter into any building or enclosed Court or garden attached to a dwelling-house not supplied with water flowing from any canal, he shall previously give the occupier of such building, Court or garden at least seven days' notice in writing of his intention to do so.

**Compensation for damage caused by entry.**

In every case of entry under this section, the Canal-officer shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section ; and, in case of dispute as to the sufficiency of the amount so tendered, he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

**STATE AMENDMENT****UTTAR PRADESH**

In its application to Uttar Pradesh, in respect of any State tube-well, references to a 'canal-officer' in this section shall be deemed to be references to a 'Tube-well Officer.' — U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937.]

**15. Power to enter for repairs and to prevent accidents.**

In case of any accident happening or being apprehended to a canal any Divisional Canal-officer or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

**Compensation for damage to land.**

In every such case such Canal-officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal-officer shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the [State Government] had directed the occupation of the lands under section 43 of the Land Acquisition Act, 1870.<sup>a</sup>

[a] See now the Land Acquisition Act, 1894 (I of 1894), S. 35.

**STATE AMENDMENT****UTTAR PRADESH**

In its application to Uttar Pradesh, in respect of any State Tube-well, references to a "Canal-officer" and a "Divisional Canal-officer" in this section shall be deemed to be references to a "Tube-well Officer" and a "Divisional Officer" respectively.

—U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937.]

**Section 15 — Note 1**

[1] Where the canal authorities cut the bank of a canal to avoid accident to the adjoining railway and not to the canal and plaintiff's adjacent mills were damaged : *Held* that Art. 2 was not applicable as the act alleged was not done in pursuance of any enactment. 1927 P C 72 (73) [AIR V 14] : 10 Lah 161. (AIR 1924 Lah 169 and AIR 1924 Lah 192 (1), *Reversed.*) \* 1960 Punj 66 (72) [AIR V 47 C 28] : ILR (1959) Punj 1799. (Article applicable is Art. 36.)

[2] The words "may execute all works" in S. 15 do not depend upon the preceding words and entering upon the land adjacent is a necessary preliminary for the execution of

any work on a canal. 1924 Lah 169 (170) [AIR V 11] : 4 Lah 428.

[3] Section 15 is a special case which has its own procedure to govern it prescribed in the Act. Under S. 15 it is the officer who is to tender compensation to the proprietor and if the proprietor does not accept it, it is the officer who has to refer the matter to the Collector. If therefore a Revenue Officer removes earth from the land of a person but does not offer any compensation to the latter for the earth and consequently there has been no reference to the Collector, a suit by the person against 'Government claiming compensation is not barred by any provisions of the Act. 1939 Lah 583 (585) [AIR V 26].

**16. Application by persons desiring to use canal-water.**

Any persons desiring to use the water of any canal may apply in writing to the Divisional or Sub-divisional Canal-officer of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer to construct or improve a water-course at the cost of the applicants.

**Contents of application.**

The application shall state the works to be undertaken, their approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal-officer, and how the payment is to be made.

**Liability of applicants for cost of works.**

When the assent of the Superintending Canal-officer is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

**Recovery of amount due.**

Any amount becoming due under the terms of such application, and not paid to the Divisional Canal-officer, or the person authorised by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land-revenue.

**STATE AMENDMENT****UTTAR PRADESH**

In its application to Uttar Pradesh, in respect of any State tube-well, the references to a 'Divisional Canal-officer', a 'Sub-divisional Canal-officer' and a 'Superintending Canal-officer' in this section shall be deemed to be the references to a 'Divisional-Officer' a 'Sub-divisional Officer' and a 'Superintending Engineer' respectively.

—U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937.]

**17. Government to provide means of crossing canals.**

There shall be provided, at the cost of the <sup>A</sup>[State Government] suitable means of crossing canals constructed or maintained at the cost of the <sup>A</sup>[State Government], at such places as the <sup>A</sup>[State Government] thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Collector shall cause enquiry to be made into the circumstances of the case, and if he thinks that the statement is established, he shall report his opinion thereon for the consideration of the <sup>A</sup>[State Government], and the <sup>A</sup>[State Government] shall cause such measures in reference thereto to be taken as it thinks proper.

**18. Persons using water-course to construct works for passing water across roads, etc.**

The Divisional Canal-officer may issue an order to the persons using any water-course to construct suitable bridges, culverts or other works for the passage of the water of such water-course across any public road, canal or drainage-channel in use before the said water-course was made, or to repair any such works.

Such order shall specify a reasonable period within which such construction or repairs shall be completed;

**If they fail, Canal-officer may construct,**

and if, after the receipt of such order, the persons to whom it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal-officer, he may, with the previous approval of the Superintending Canal-officer, himself construct or repair the same;

and recover cost.

and if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal-officer, the amount shall, on the demand of the Divisional Canal-officer, be recoverable from them by the Collector as if it were an arrear of land revenue.

#### STATE AMENDMENT

#### UTTAR PRADESH

In its application to Uttar Pradesh, in respect of any State tube-well, references to a 'Canal-officer', a 'Superintending Canal-officer', and a 'Divisional Canal-officer' in this section shall be deemed to be references to a 'Tube-well officer', a 'Superintending Engineer', a 'Divisional Officer', and a 'Sub-Divisional Officer' respectively.

—U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937.]

#### 19. Adjustment of claims between persons jointly using water-course.

If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water-course with others, neglects or refuses to pay his share of the cost of such construction or maintenance, or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-divisional Canal-officer, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of a fortnight from the service, he will investigate the case; and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Such order shall be appealable to the Commissioner, whose order thereon shall be final.

#### Recovery of amount found due.

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector, from the person directed to pay the same, as if it were an arrear of land-revenue.

#### STATE AMENDMENT

#### UTTAR PRADESH

In its application to Uttar Pradesh, in respect of any State tube-well, reference to a Divisional or Sub-divisional Canal-officer' in this section shall be deemed to be a reference to a 'Divisional or a Sub-divisional Officer.' —U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937.]

#### 20. Supply of water through intervening water-course.

Whenever application is made to a Divisional Canal-officer for a supply of water from a canal, and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed: and, after making enquiry on such day, the Divisional Canal-officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

When such officer determines that a supply of canal-water may be conveyed through any water-course as aforesaid, his decision shall, when confirmed or

#### Section 20 — Note 1

[1] Where a water course is thirty years old a Court will be entitled to draw a presumption that it was started by agreement or action was taken under S. 20 or S. 21. 1929 All 271 (271) [AIR V 16] : 30 Cri L Jour 669.

[2] Water course running on another's land—Right to user cannot be acquired on basis of presumption under S. 114, illus. (e) of the Evidence Act—It can be acquired under the Act or by agreement. 1960 All 656 (658) [AIR V 47 C 192] : 1960 Cri L Jour 1388.

[3] An order passed by the Divisional Officer under S. 20 and confirmed by the Superintending Canal Officer cannot be questioned by a Civil Court, if it complies with all the requirements of that section. ('88) 1888 Pun Re No. 71 (at p. 186).

[4] A proceeding under S. 20 will be defective, if it does not allow clear 14 days to elapse between the receipt (and not merely the issue) of the notice issued under the section and the actual hearing. ('94) 1894 Pun Re No. 144, p. 545 (546) (DB).

modified by the Superintending Canal-officer, be binding on the applicant and also on the persons responsible for the maintenance of the water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first cost of such water-course as the Divisional or Superintending Canal-officer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it.

#### STATE AMENDMENT

##### UTTAR PRADESH

In its application to Uttar Pradesh, in respect of any State tube-well, references to a 'Divisional Canal Officer' and a 'Superintending Canal-officer' in this section shall be deemed to be references to a 'Divisional Officer' and a 'Superintending Engineer' respectively.

— U. P. Act XII of 1936, S. 6 [w.e.f. 13-3-1937].

### 21. Application for construction of new water-course.

Any person desiring the construction of a new water-course may apply in writing to the Divisional Canal-officer, stating—

- (1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass, a right to occupy so much of the land as will be needed for such water-course ;
- (2) that he desires the said Canal-officer, in his behalf and at his cost, to do all things necessary for acquiring such right ;
- (3) that he is able to defray all costs involved in acquiring such right and constructing such water-course.

#### STATE AMENDMENT

##### UTTAR PRADESH

In its application to Uttar Pradesh, in respect of any State tube-well, references to a 'Canal-officer' and a 'Divisional Canal-officer, in this section shall be deemed to be references to a 'Tube-well Officer' or a 'Divisional Officer' respectively.

— U. P. Act XII of 1936, S. 6 [w.e.f. 13-3-1937].

### 22. Procedure of Canal-officer thereupon.

If the Divisional Canal-officer considers—

- (1) that the construction of such water-course is expedient, and
- (2) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 28 ;

and, upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said water-course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of such land as belongs

#### Section 21 — Note 1

[1] A right to make a cut across the land of the objecting parties is a creation of the Canal Act which provides the manner in which it is to be acquired viz., by an application to the Divisional Canal Officer under S. 21 of the Act. ('88) 1888 Pun Re No. 114, p. 318 (319) (DB).

[2] A Civil Court has no jurisdiction to decree a perpetual injunction restraining a party, to whom permission has been granted under the Act of 1873 to construct a water channel through the land of another, from

constructing that channel, provided that the procedure prescribed by the Act has been complied with. ('07) 1907 Pun Re No. 74, p. 388 (389).

[3] The right to construct a water-course through another's land can only be acquired either under some provision of the Act or by private agreement. Such right can also be acquired by virtue of S. 20 and S. 21 of the Act. 1960 All 656 (658) [AIR V 47 C 192] : 1960 Cri L Jour 1388.

to such village has been so marked out, and shall send a copy of such notice to the Collector of every district in which any part of such land is situate.

#### STATE AMENDMENT

#### UTTAR PRADESH

In its application to Uttar Pradesh, in respect of any State tube-well, references to a 'Divisional Canal-officer' in this section shall be deemed to be reference to a 'Divisional Officer.'

— U. P. Act XII of 1936, S. 6 [w.e.f. 13-3-1937].

### 23. Application for transfer of existing water-course.

Any person desiring that an existing water-course should be transferred from its present owner to himself may apply in writing to the Divisional Canal-officer, stating—

- (1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course ;
- (2) that he desires the said Canal-officer, in his behalf and at his cost, to do all things necessary for procuring such transfer ;
- (3) that he is able to defray the cost of such transfer.

#### Procedure thereupon.

If the Divisional Canal-officer considers—

- (a) that the said transfer is necessary for the better management of the irrigation from such water-course, and
- (b) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of section 28 in respect of such transfer ;

and upon such deposit being made, he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district, through which such water-course passes.

#### STATE AMENDMENT

#### UTTAR PRADESH

In its application to Uttar Pradesh, in respect of any State tube-well, references to a 'Canal-officer' and a 'Divisional Canal-officer' in this section shall be deemed to be references to a 'Tube-well Officer' and a 'Divisional Officer' respectively.

— U. P. Act XII of 1936, S. 6 [w.e.f. 13-3-1937].

### 24. Objections to construction or transfer applied for.

Within thirty days from the publication of a notice under section 22 or section 23, as the case may be, any person interested in the land or water-course to which the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made.

The Collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal-officer of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section and the grounds thereof.

#### STATE AMENDMENT

#### UTTAR PRADESH

In its application to Uttar Pradesh in respect of any State tube-well, reference to a 'Divisional Canal Officer' in this section shall be deemed to be a reference to a 'Divisional Officer'.

— U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].



**25. When applicant may be placed in occupation.**

If no such objection is made, or (where such objection is made) if the Collector over-rules it, he shall give notice to the Divisional Canal-officer to that effect, and shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

**STATE AMENDMENT****UTTAR PRADESH**

In its application to Uttar Pradesh in respect of any State tube-well, reference to a 'Divisional Canal-Officer' in this section shall be deemed to be a reference to a 'Divisional Officer'.  
— U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

**26. Procedure when objection is held valid.**

If the Collector considers any objection made as aforesaid to be valid he shall inform the Divisional Canal-officer accordingly; and, if such officer sees fit, he may, in the case of an application under section 21, alter the boundaries of the land so marked out, and may give fresh notice under section 22; and the procedure hereinbefore provided shall be applicable to such notice, and the Collector shall thereupon proceed as before provided.

**STATE AMENDMENT****UTTAR PRADESH**

In its application to Uttar Pradesh in respect of any State tube-well, reference to a 'Divisional Canal Officer' in this section shall be deemed to be a reference to a 'Divisional Officer'.  
— U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

**27. Procedure when Canal-officer disagrees with Collector.**

If the Canal-officer disagrees with the Collector, the matter shall be referred for decision to the Commissioner.

Such decision shall be final, and the Collector, if he is so directed by such decision, shall, subject to the provisions of section 28, cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be.

**STATE AMENDMENT****UTTAR PRADESH**

In its application to any State tube-well in Uttar Pradesh for the words "Canal-Officer" substitute the words "Divisional Officer".

—U. P. Act XII of 1936, S. 6 & Sch, item 3. [w. e. f. 13-3-1937].

**28. Expenses to be paid by applicant before receiving occupation.**

No such applicant shall be placed in occupation of such land or water-course until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

**Procedure in fixing compensation.**

In determining the compensation to be made under this section the Collector shall proceed under the provisions of the Land Acquisition Act, 1870<sup>1</sup>; but he may, if the person to be compensated so desires, award such compensation in the form of a rent-charge payable in respect of the land or water course occupied or transferred.

**Section 25 — Note 1**

[1] The defendant applied to the canal officer for the construction of a new water course. A reference was made to the Collector who, after proceeding in accordance with law, recorded an order putting the defendant in possession of land belonging to the plaintiff. The plaintiff

having sued to set aside the order and for such other relief as the Court might grant: Held, that the order of the Collector under S. 25 was final and the Civil Court had no jurisdiction to entertain the suit. ('97) 1897 Pun Re No. 64, p. 291 (292).

**Recovery of compensation and expenses.**

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collector as if it were an arrear of land-revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

[a] See now the Land Acquisition Act, 1894 (I of 1894).

**29. Conditions binding on applicant placed in occupation.**

When any such applicant is placed in occupation of land or of a water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest :—

*First.*—All works necessary for the passage across such water-course, or water-courses, existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Divisional Canal-officer.

*Second.*—Land occupied for a water-course under the provisions of section 22 shall be used only for the purpose of such water-course.

*Third.*—The proposed water-course shall be completed to the satisfaction of the Divisional Canal-officer within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or a water-course is transferred on the terms of a rent-charge.

*Fourth.*—The applicant or his representative in interest shall, so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation.

*Fifth.* — If the right to occupy the land cease owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative in interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Collector determines.

*Sixth.*—The Collector may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation; and, if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six per cent. per annum from the date on which it became due, as if it were an arrear of land-revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this section are not complied with,

or if any water-course constructed or transferred under this Act is disused for three years continuously,

the right of the applicant, or of his representative in interest, to occupy such land or water-course shall cease absolutely.

**STATE AMENDMENT****UTTAR PRADESH**

In its application to Uttar Pradesh in respect of any State tube-well, reference to a 'Divisional Canal-officer' in this section shall be deemed to be a reference to a 'Divisional Officer'.

**30. Procedure applicable to occupation for extensions and alterations.**

The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extension or alteration of a water-course, and for the deposit of soil from water-course clearances.

**STATE AMIENDMENT****SECTIONS 30-A to 30-G****PUNJAB**

After S. 30, *insert* the following sections, namely :—

**“30-A.** (1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters, namely :—

- (a) the construction, alteration, extension and alignment of any water-course or realignment of any existing watercourse;
- (b) reallocation of areas served by one watercourse to another;
- (c) the lining of any watercourse;
- (d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse.

(2) Every scheme prepared under sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of the proposed water course or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the shareholders to be benefited and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.

**30-B.** (1) Every scheme shall, as soon as may be, after its preparation be published in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions with respect thereof within 30 days of the publication.

(2) After considering all objections and suggestions that may have been received by the Divisional Canal Officer, the Divisional Canal Officer shall submit the scheme with such amendments as he considers necessary together with his remarks on the objections and suggestions received by him, to the Superintending Canal Officer for his approval.

(3) The Superintending Canal Officer may direct the Divisional Canal Officer to furnish such information as he may require for the purpose of approving the scheme submitted to him under this section.

(4) The scheme submitted by the Divisional Canal Officer may be approved by the Superintending Canal Officer either as it was submitted to him by the Divisional Canal Officer or in such modified form as he may consider fit.

**30-C.** The Divisional Canal Officer shall, as soon as may be after the approval of the Superintending Canal Officer, publish the particulars of the scheme and call upon the shareholders to implement it at their own cost within the period to be specified and in the manner prescribed.

**30-D.** (1) The Divisional Canal Officer may, either of his own motion or on the application of a shareholder, publish in the manner prescribed a notice of his intention to acquire any land required for implementation of the scheme.

(2) Any person interested in the land notified under sub-section (1) may, within fifteen days from the publication thereof, apply to the Divisional Canal Officer by petition stating his objections to the proposed acquisition of his rights.

(3) After considering the objections, the Divisional Canal Officer may proceed to take the occupation of the land so required on behalf of the shareholders.

(4) Compensation, to be fixed by the Divisional Canal Officer on the principles set out under section 23 of the Land Acquisition Act, 1894, shall be payable by the shareholders in proportion to the culturable commanded area under the scheme held by each one of them to the owner or occupier of any land for such acquisition and on failure of payment, the amount shall be recoverable as arrears of land revenue.

(5) A person aggrieved from the order of the Divisional Canal Officer in respect of compensation may prefer an appeal within thirty days of the passing of the order to the Collector whose decision shall be final.

**30-E.** On failure of any shareholder to execute the work within the period specified in the notice under section 30-C the Divisional Canal Officer may proceed to carry out the work himself and the cost in proportion to the culturable commanded area under the scheme held by them shall be recoverable from the shareholders as arrears of land revenue.

**30-F.** On execution of the scheme, the Divisional Canal Officer shall, by requisition in writing, direct the shareholders to take over and maintain the water course and on failure of the shareholders to comply with this direction, he shall make arrangements for maintenance of the water course at the shareholders' cost in proportion to the culturable commanded area under the scheme held by them and the same shall be recoverable as arrears of land revenue.

**30-G.** Notwithstanding anything contained in this Act or any other law for the time being in force, no Civil Court shall have jurisdiction to entertain or decide any question relating to matters falling under sections 30-A to 30-F.”

— Punj. Act XXI of 1958, S. 3 [10-7-1958].

## PART IV OF THE SUPPLY OF WATER

### **31. In absence of written contract, water-supply to be subject to rules.**

In the absence of a written contract, or so far as any such contract does not extend, every supply of canal-water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the <sup>A</sup>[State Government] in respect thereof.

### **32. Conditions as to—**

Such contracts and rules must be consistent with the following conditions :—  
**power to stop water-supply ;**

(a) The Divisional Canal-officer may not stop the supply of water to any water-course, or to any person, except in the following cases :—

(1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the <sup>A</sup>[State Government] ;

(2) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom ;

(3) within periods fixed from time to time by the Divisional Canal-officer ;

**claims to compensation in case of failure or stoppage of supply ;**

(b) No claim shall be made against the <sup>A</sup>[State Government] for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of the <sup>A</sup>[State Government] or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal-officer considers necessary ; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorised by the <sup>A</sup>[State Government] :

**claims on account of interruption from other causes ;**

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause,

#### **Section 31 — Note 1**

[1] The use of water from a tank which has been filled with canal water for building of a pucca house though not authorised under R.10 framed under S. 31 is not penalised by any section of the Act and is therefore not punishable. 1921 Lah 187 (2) (188) [AIR V 8]: 23 Cri L Jour 17.

#### **Section 32 — Note 1**

[1] Section 32 (e), Northern India Canal and Drainage Act, does not make a contract to transfer right to receive canal water void from its inception. The only condition provided by the sub-section is that the approval of Superintending Canal Officer must be obtained by the alienee to complete a valid alienation of the right to irrigate the property sold with canal water. Such approval can be obtained

even subsequent to the alienation and the law does not insist that it must precede the completion of the agreement to alienate. 1950 Pepsu 47 (47) [AIR V 37 C 17].

[2] A transfer of a greater share of canal water than the area of land transferred warranted is not invalid, although the right to such water is attached to other land belonging to the vendor. 1950 Pepsu 47 (48) [AIR V 37 C 17].

[3] The right to water-course through the land of another cannot be acquired by presumption under Illustration (e) to S. 114 of the Evidence Act. If a person is allowed to use the water of the water-course without the permission of the Superintending Canal Officer under S. 32 (e) he is liable for prosecution for his act. 1960 All 656 (659) [AIR V 47 C 192] : 1960 Cri L Jour 1388.

the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss :

duration of supply ;

- (d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop ; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year :

sale or subletting of right to use canal-water ;

- (e) Unless with the permission of the Superintending Canal-officer, no person entitled to use the water of any canal, or any work, building or land appertaining to any canal, shall sell or sublet or otherwise transfer his right to such use :

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant :

transfer, with land, of contracts for water.

But all contracts made between the <sup>A</sup>[State Government] and the owner or occupier of any immovable property, as to the supply of canal-water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place :

No right acquired by user.

- (f) No right to the use of the water of a canal shall be, or be deemed to have been, acquired under the "Indian Limitation Act, 1877, Part IV, nor shall the <sup>A</sup>[State Government] be bound to supply any person with water except in accordance with the terms of a contract in writing.

[a] See now the Indian Limitation Act, 1908 (IX of 1908).

#### STATE AMENDMENTS

##### PUNJAB

- (i) In sub-clause (1) of clause (a), the words "and with the previous sanction of the State Government" shall be deemed to be *omitted*.  
(ii) Clause (d) shall be deemed to be *omitted*. —Punj. Act XXI of 1954, S. 4 (3).

##### UTTAR PRADESH

- (i) Same as (i) and (ii) of the Punjab.  
(ii) In its application to Uttar Pradesh in respect of any State Tube-well, references to a 'Divisional Canal-officer' and a 'Superintending Canal-officer' in this section shall be deemed to be references to a 'Divisional Officer' and a 'Superintending Engineer' respectively.

—U. P. Act XII of 1936, S. 6 and Schedule, Item 4 [w. e. f. 13-3-1937].

#### PART V.

#### OF WATER-RATES

### 33. Liability when person using unauthorisedly cannot be identified.

If water supplied through a water-course be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified,

#### Section 33 — Note 1

[1] From a perusal of Ss. 33, 34 and 35 it is clear that where an unauthorised use has occurred persons who have not been guilty of any injury to the canal or of any act on

account of which the unauthorised use has occurred are also liable for the charge for the unauthorised use of the water. The facts that such persons did not cause the breach in the canal and were ignorant of the breach are

the person on whose land such water has flowed if such land has derived benefit therefrom,

or if such person cannot be identified or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such water-course, shall be liable, or jointly liable, as the case may be, to the charges made for such use<sup>a</sup>.

[a] As to the authority empowered to decide questions under this section, see S. 35.

### 34. Liability when water runs to waste.

If water supplied through a water-course be suffered to run to waste, and if, after enquiry by the Divisional Canal-officer, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the persons chargeable in respect of the water supplied through such water-course shall be jointly liable for the charges made in respect of the water so wasted.<sup>a</sup>

[a] As to the authority empowered to decide questions under this section, see S. 35.

### STATE AMENDMENT

#### UTTAR PRADESH

In its application to Uttar Pradesh in respect of any State Tube-well, reference to a 'Divisional Canal-officer' in this section shall be deemed to be a reference to a 'Divisional officer.'

— U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

### 35. Charges recoverable in addition to penalties.

All charges for the unauthorised use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

#### Decision of questions under sections 33 and 34.

All questions under section 33 or section 34 shall be decided by the Divisional Canal-officer, subject to an appeal to the Head Revenue-officer of the district, or such other appeal as may be provided under section 75.

### STATE AMENDMENTS

#### PUNJAB

In its application to the State of Punjab, in section 35—

(1) to the second paragraph, *add* the following Proviso, namely,—

"Provided that before recording his decision on such question under S. 33 or S. 34 as may be specified in the rules to be made by the State Government, the Divisional Canal Officer shall obtain the advice of an Advisory Committee to be constituted by the State Government for every division of a canal in such manner as the State Government may determine by rules made under this Act."

(2) after the second paragraph as amended by clause (1), *add* the following paragraphs, namely,—

"Every Advisory Committee shall consist of not more than five non-official members, including the Chairman, who shall be appointed by the State Government on such terms and conditions as may be determined by such rules.

The advice of the Advisory Committee shall be binding on the Divisional Canal Officer :

Provided that where the Divisional Canal Officer is unable to accept such advice he shall, with his opinion expressed thereon, refer the question to the Commissioner who shall,

(a) if he accepts the advice, pass an order accordingly; and

(b) if he does not accept the advice, refer the question to the State Government, with his opinion expressed thereon, whose decision on such reference shall be final."

— Punj. Act XXII of 1960, S. 2.

#### Section 33 — Note 1 (contd.)

therefore immaterial. 1957 All 204 (205) [AIR V 44 C 55] (DB).

[2] The expression "unauthorised use" in R. 27 of the Rules made under the Act refers to Ss. 33 and 35. 1957 All 204 (205) [AIR V 44 C 55] (DB).

#### Section 35 — Note 1

[1] Section 35 of Northern India Canal and Drainage Act can have no application, unless

the case of the plaintiff as laid in the plaint falls within the purview of S. 33. If therefore the plaintiff's case, as stated in the plaint, is that he used water from the tanks for irrigating his trees and that he never took water from the canal authorities outside the terms of his contract, the section has obviously no application. It is well settled that the jurisdiction of a Court has to be determined on the allegations made in the plaint and a suit cannot be thrown out on ground pleaded in

**UTTAR PRADESH**

In its application to Uttar Pradesh in respect of any State Tube-well, reference to a 'Divisional Canal-officer' in this section shall be deemed to be a reference to a 'Divisional Officer.'

— U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

**36. Charge on occupier for water, how determined.**

The rates to be charged for canal-water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules<sup>a</sup> to be made by the <sup>A</sup>[State Government], and such occupiers as accept the water shall pay for it accordingly.

**"Occupier's rate."**

A rate so charged shall be called the "occupier's rate."

<sup>b</sup>[The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sublet their lands or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy.]

[a] See Punj. Gaz., 1903, Pt. I, pp. 223, 224. For Uttar Pradesh, see under S. 75. [b] Inserted by the Northern India Canal and Drainage (Amendment) Act, 1899 (XVI of 1899), S. 2.

**37. "Owner's rate."**

In addition to the occupier's rate, a rate to be called the "owner's rate" may be imposed, according to rules<sup>a</sup> to be made by the <sup>A</sup>[State Government], on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation.

[a] See the Punjab and the U. P. Rules and Orders.

See also under S. 75.

**38. Amount of owner's rate.**

The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land-revenue, might be assessed on such land on account of the increase in the annual value or produce thereof caused by the canal-irrigation. And, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

**39. Owner's rate, when not chargeable.**

No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land-revenue at irrigation-rates, during the currency of such assessment.

**40. When occupier is to pay both owner's rate and occupier's rate.**

If such land is occupied by the owner,

or if it is occupied by a tenant whose rent is not liable to enhancement on the ground that the value of the produce of the land or the productive powers of the land has or have been increased by irrigation,

such owner or tenant shall pay the owner's rate as well as the occupier's rate.

**Section 35 — Note 1 (contd.)**

the written statement. 1947 Lah 236 (237) [AIR V 34 C 46] (DB).

[2] The expression "unauthorised use" in S. 38 and R. 27 of the Rules made under this Act includes the case of a person who may not have deliberately broken the canal or taken water to his land in an unauthorised manner but on whose land water has flowed giving benefit to it by such overflow. 1957 All 204 (205) [AIR V 44 C 55] (DB).

**Section 40 — Note 1**

[1] The object of S. 40 is to provide that in certain cases, the tenants shall pay the owner's rate, and, that, in other cases, the tenant shall not be liable to pay and that he shall also not be liable to pay "if, when the amount of rent was fixed, the land was irrigated from the canal." ('85) 1885 Pun Re No. 88, p. 185 (187) (DB).

## STATE AMENDMENT

## PUNJAB

In its application to Punjab Section 40 has been repealed by the Punjab Tenancy Act, 1887 (XVI of 1887), S. 3 and Sch.

**41. Power to make rules for apportioning owner's rate.**

In the case of a tenant with a right of occupancy, the <sup>A</sup>[State Government] shall have power to make rules for dividing the owner's rate between such tenant and his landlord, proportionately to the extent of the beneficial interest of each in the land.

## STATE AMENDMENT

## PUNJAB

In its application to Punjab section 41 has been repealed by the Punjab Tenancy Act, 1887 (XVI of 1887), S. 3 and Sch.

**42. When owner is to pay owner's rate.**

If the owner of the land is not the occupier, but has power to enhance the rent of the occupier on the ground that the value of the produce or the productive powers of the land has or have been increased by irrigation,

or if, when the amount of a rent was fixed, the land was irrigated from the canal,

the owner shall pay the owner's rate.

## STATE AMENDMENT

## PUNJAB

In its application to Punjab section 42 has been repealed by the Punjab Tenancy Act, 1887 (XVI of 1887), S. 3 and Sch.

**43. Effect of introduction of canal-irrigation on landlord's right to enhance.**

If a revision of settlement is a ground for entertaining a suit for the enhancement of rent, the introduction of canal-irrigation into any land shall have the same effect on the landlord's right to re-enhance the rent of a tenant with a right of occupancy of such land, as if a revision of settlement had taken place, under which the revenue payable in respect of such land had been increased.

## STATE AMENDMENT

## PUNJAB

In its application to Punjab section 43 has been repealed by the Punjab Tenancy Act, 1887 (XVI of 1887), S. 3 and Sch.

**44. Water-rate by whom payable, when charged on land held by several owners.**

Where a water-rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

*Recovery of charges***45. Certified dues recoverable as land-revenue.**

Any sum lawfully due under this Part, and certified by the Divisional Canal-officer to be so due, which remains unpaid after the day on which it becomes due, shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land-revenue.

**Section 45 — Note 1**

[1] By virtue of S. 45, a suit for the recovery of excess payment in respect of irrigation dues cannot lie in a civil Court as these dues are recoverable only by the collector as provided in this section. (1900) 22 All 139

(141) \* ('03) 25 All 527 (532) : 30 Ind App 172 (PC).

[2] Local Government recovering dues under S. 45 from plaintiff for wrongful use of canal water — Plaintiff paying money not under protest within meaning of S. 78, Punjab



## STATE AMENDMENT

## UTTAR PRADESH

(i) In its application to Uttar Pradesh for S. 45 substitute the following, namely:—

"45. *Certified dues to be recovered as land-revenue.*—Subject to the provisions of Ss. 46 and 47 any sum lawfully due under this Part and certified by Divisional Canal-officer to be so due which remains unpaid after the day on which it becomes due shall be recovered by the Collector from the person liable for the same as if it were an arrear of land-revenue."

—U. P. Act VI of 1932, S. 2.

(ii) In its application to Uttar Pradesh in respect of any State Tube-well, reference to a 'Divisional Canal-officer' in this section shall be deemed to be a reference to a 'Divisional officer'.

—U. P. Act XII of 1938, S. 6 [w. e. f. 13-3-1937.]

**46. Power to contract for collection of canal-dues.**

The Divisional Canal-officer or the Collector may enter into an agreement with any person for the collection and payment to the State Government by such person of any sum payable under this Act by a third party.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable, or for or in which the canal-water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under section 45; and, if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Collector from such third party.

## STATE AMENDMENT

## UTTAR PRADESH

In its application to Uttar Pradesh in respect of any State tube-well, reference to a 'Divisional Canal-officer' in this section shall be deemed to be a reference to a 'Divisional Officer'.

—U. P. Act XII of 1938, S. 6 [w. e. f. 6-3-1937].

**47. Lambardars may be required to collect canal-dues.**

The Collector may require the lambardar, or person under engagement to pay the land-revenue of any estate, to collect and pay any sums payable under this Act by a third party, in respect of any land or water in such estate.

Such sums shall be recoverable by the Collector as if they were arrears of land-revenue due in respect of the defaulter's share in such estate;

and for the purpose of collecting such sums from the subordinate zemindars, raiyats, <sup>a</sup>[tenants or sub-tenants], such lambardar or person may exercise the powers, and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land-revenue.

The <sup>a</sup>[State Government] shall provide—

- (a) for remunerating persons collecting sums under this section; or
- (b) for indemnifying them against expenses properly incurred by them in such collection; or
- (c) for both such purposes.

[a] *Substituted* for "or tenants" by the Northern India Canal and Drainage (Amendment) Act, 1899 (XVI of 1899), S. 3.

**Section 45 — Note 1 (contd.)**  
Land Revenue Act—Suit for refund — Jurisdiction of civil Court is ousted. 1947 Lah 236 (238) [AIR V 34 C 46].

[But see '03] 25 All 527 (532) : 30 Ind App 172 (PC).]

[3] Section 45 only provides for recovery of the charge by the Collector as if it were an arrear of land-revenue. It gives authority to the Collector to recover the charge, but does

not lay down the manner in which the charge is to be realised. Powers of Revenue Officers in the matter of realization of Land Revenue and the mode of realizing it are defined and settled by the Punjab Land Revenue Act which is in force in the State. There is nothing wrong about recovery being made by the Tahsildar. 1956 Pepsu 40 (48) [AIR V 43 C 15] (DB).

## STATE AMENDMENT

## UTTAR PRADESH

In its application to Uttar Pradesh, for section 47 *substitute* the following, namely :—

“47. *Grant of permission to lambardars to collect canal-dues.*—(1) If the lambardar or person under engagement to pay the land revenue of any estate desires to collect and pay to the Provincial Government any sums payable under this Act by a third party in respect of any land or water in such an estate he shall apply to the Collector and the Collector may grant or refuse his application.

(2) Where such application has been allowed such sums shall be recoverable from the lambardar or persons under engagement to pay the land revenue of any estate by the collector as if they were arrears of land-revenue.

(3) The lambardar or person under engagement to pay the land revenue of any estate whose application to make collections under this section has been allowed by the Collector may for the purpose of collecting such sums from the subordinate zamindars, tenants or sub-tenants exercise the powers, and shall be subject to the rules laid down in the law for the time being in force in respect of the collection by him of the rents of land or of the shares of land-revenue.

(4) The Provincial Government shall provide—

(a) for remunerating persons collecting sums, under this section; or

(b) for indemnifying them against expenses properly incurred by them in such collection; or

(c) for both purposes.”

—U. P. Act VI of 1932, S. 3.

#### 48. Fines excluded from sections 45, 46, 47.

Nothing in section 45, 46 or 47 applies to fines.

## PART VI

## OF CANAL-NAVIGATION

#### 49. Detainer of vessels violating rules.

Any vessel entering or navigating any canal contrary to the rules made in that behalf by the <sup>A</sup>[State Government], or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or both removed and detained, by the Divisional Canal-officer, or by any other person duly authorised in this behalf.

Liability of owners of vessels causing damage.

The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to the <sup>A</sup>[State Government] such sum as the Divisional Canal-officer, with the approval of the Superintending Canal-officer, determines to be necessary to defray the expenses of repairing such damage or of such removal or detention, as the case may be.

## STATE AMENDMENT

## UTTAR PRADESH

The provisions of Part VI are not applicable in respect of any State tube-well in Uttar Pradesh.

—U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

#### 50. Recovery of fines for offences in navigating canals.

Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure<sup>a</sup> or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

[a] See now the Code of Criminal Procedure, 1898 (V of 1898).

#### 51. Power to seize and detain vessel on failure to pay charges.

If any charge due under the provisions of this Part in respect of any vessel is not paid on demand to the person authorised to collect the same, the Divisional Canal-officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

**52. Power to seize cargo or goods, if charges due thereon are not paid.**

If any charge due under the provisions of this Part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal is not paid on demand to the person authorised to collect the same, the Divisional Canal-officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

**53. Procedure for recovery of such charges after seizure.**

Within a reasonable time after any seizure under section 51 or section 52, the said Canal-officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than fifteen days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

And, if such claim be not so discharged, the said Canal-officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale :

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

**54. Procedure in respect of vessels abandoned and goods unclaimed.**

If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal, be left unclaimed for a period of two months, the Divisional Canal-officer may take possession of the same.

The officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and, if such vessel, contents, cargo or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

**Disposal of proceeds of sale.**

The said vessel and its contents, and the said cargo or goods if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional Canal-officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal-officer.

If the Divisional Canal-officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the district treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction.

## PART VII OF DRAINAGE

**55. Power to prohibit obstructions or order their removal.**

Whenever it appears to the <sup>A</sup>[State Government] that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage-channel, such Government may, by notification published in the Official Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream or drainage-channel as is comprised within such limits shall be held to be a drainage-work as defined in section 3.

#### STATE AMENDMENT

##### UTTAR PRADESH

The provisions of Part VII are not applicable in respect of any State tube-well in Uttar Pradesh—U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

#### 56. Power to remove obstructions after prohibition.

The Divisional Canal-officer, or other person authorised by the <sup>A</sup>[State Government] in that behalf, may, after such publication issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said Canal-officer may himself remove or modify the obstruction ; and if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land-revenue.

#### 57. Preparation of schemes for works of improvement.

Whenever it appears to the <sup>A</sup>[State Government] that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof,

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands, the <sup>A</sup>[State Government] may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which the <sup>A</sup>[State Government] proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

#### STATE AMENDMENT

##### SECTION 57-A

##### PUNJAB

"57-A. The provisions contained in sections 30-A to 30-G shall apply to Field Drains as well."—Punj. Act XXI of 1958, S. 4 [10-7-1958].

#### 58. Powers of persons employed on such schemes.

The persons authorised by the <sup>A</sup>[State Government] to draw up such scheme may exercise all or any of the powers conferred on the Canal-officers by section 14.

#### 59. Rate on lands benefited by works.

An annual rate, in respect of such scheme, may be charged, according to rules to be made by the <sup>A</sup>[State Government], on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable.

Such rate shall be fixed, as nearly as possible, so as not to exceed either of the following limits :—

- (1) six per cent. per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works, excluding the said rate :
- (2) in the case of agricultural land, the sum which under the rules then in force for the assessment of land-revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage-work.

Such rate may be varied from time to time within such maximum, by the <sup>A</sup>[State Government.]

So far as any defect to be remedied is due to any canal, water-course, road or other work or obstruction, constructed or caused by the <sup>^</sup>[State Government] or by any person, a proportionate share of the cost of the drainage-works required for the remedy of the said defect shall be borne by such Government or such person, as the case may be.

#### STATE AMENDMENT

##### PUNJAB

For section 59, *substitute* the following :—

"(1) The proportion of the cost, other than that which is to be defrayed by Government, in respect of such scheme, may be charged from the owners of all lands made chargeable under section 57, in accordance with rules made by the State Government in this behalf.

(2) An owner shall be competent to contribute towards the charges payable by him either wholly or in part in terms of land, labour or cash in the manner prescribed by rules made in this behalf."—Punj. Act XIX of 1953, S. 2 [28-4-1953].

### 60. Recovery of rate.

Any such drainage-rate may be collected and recovered in manner provided by sections 45, 46 and 47 for the collection and recovery of water-rates.

#### STATE AMENDMENT

##### PUNJAB

For section 60, *substitute* the following :—

"Any sum certified by the Divisional Canal Officer to be due under the last preceding section and which remains unpaid after the expiry of the period during which it was payable, shall be recoverable from the owner liable for the same as if it were an arrear of land revenue."—Punj Act XIX of 1953, S. 2 [28-4-1953].

### 61. Disposal of claims to compensation.

Whenever, in pursuance of a notification made under section 55, any obstruction is removed or modified,

or whenever any drainage-work is carried under section 57,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in section 10.

### 62. Limitation of such claims.

No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

## PART VIII

### OF OBTAINING LABOUR FOR CANALS AND DRAINAGE-WORKS

### 63. Definition of "labourer".

For the purposes referred to in this Part, the word "labourer" includes persons who exercise any handicraft specified in rules to be made in that behalf by the <sup>^</sup>[State Government].

### 64. Power to prescribe number of labourers to be supplied by persons benefited by canal.

In any district in which a canal or drainage-work is constructed, maintained or projected by the <sup>^</sup>[State Government], the <sup>^</sup>[State Government] may, if it thinks fit, direct the Collector—

- (a) to ascertain the proprietors, sub-proprietors or farmers whose villages or estates are or will be in the judgment of the Collector, benefited by such canal or drainage-work, and

- (b) to set down in a list, having due regard to the circumstances of the districts and of the several proprietors, sub-proprietors or farmers, the number of labourers which shall be furnished by any of the said persons, jointly or severally, from any such village or estate, for employment on any such canal or drainage-work when required as hereinafter provided.

The Collector may, from time to time, add to or alter such list or any part thereof.

#### STATE AMENDMENT

#### UTTAR PRADESH

In its application to Uttar Pradesh, in respect of any State tube-well reference to a 'Divisional Canal-Officer' in this section shall be deemed to be a reference to a "Divisional Officer".—U. P. Act XII of 1936, S. 6 [w. e. f. 13-3-1937].

### 65. Procedure for obtaining labour for works urgently required.

Whenever it appears to a Divisional Canal-Officer duly authorised by the <sup>^</sup>[State Government] that, unless some work is immediately executed, such serious damage will happen to any canal or drainage-work as to cause sudden and extensive public injury,

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury, the said officer may require any person named in such list to furnish as many labourers (not exceeding the number which, according to the said list he is liable to supply) as to the said officer seems necessary for the immediate execution of such work.

Every requisition so made shall be in writing, and shall state—

- (a) the nature and locality of the work to be done;
- (b) the number of labourers to be supplied by the person upon whom the requisition is made; and
- (c) the approximate time for which and the day on which the labourers will be required;

and a copy thereof shall be immediately sent to the Superintending Canal-Officer for the information of the <sup>^</sup>[State Government].

The <sup>^</sup>[State Government] shall fix, and may from time to time alter the rates to be paid to any such labourers :

Provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work.

In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this part, prevented from following his ordinary occupation.

The <sup>^</sup>[State Government] may <sup>^</sup>\* \* \* <sup>^</sup>\* direct that the provisions of this part shall apply, either permanently or temporarily (as the case may be), to any district or part of a district for the purpose of effecting necessary annual silt-clearances, or to prevent the proper operation of a canal or drainage-work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

[a] The words "with the previous sanction of the Governor-General in Council" were omitted by the Decentralization Act, 1914 (IV of 1914).

### 66. Liability of labourers under requisition.

When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply, and to continue to supply, his labour, for the purposes aforesaid.

## PART IX

### OF JURISDICTION

#### 67. Jurisdiction under this Act of Civil Courts.

Except where herein otherwise provided, all claims against the <sup>A</sup>[State Government] in respect of anything done under this Act may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal-water to any crop sown or growing at the time of such order.

#### 68. Settlement of differences as to mutual rights and liabilities of persons interested in water-course.

Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, any such person may apply in writing to the Divisional Canal-officer stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to inquire into the said matter. And, after such inquiry, he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Collector, who shall thereupon inquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made, and shall thereafter remain in force until set aside by the decree of a Civil Court.

### STATE AMENDMENTS

#### PUNJAB

For the words "Such Officer shall thereupon give notice" the words "On receipt of such application or when in the opinion of the Divisional Officer any such difference is likely to arise he shall give notice" shall be deemed to be substituted.

— Punj. Act XXI of 1954, S. 4.

#### UTTAR PRADESH

(i) Same as that of Punjab.

(ii) In its application to Uttar Pradesh, in respect of any State tube-well, reference to a 'Divisional Canal-officer' in this section shall be deemed to be a reference to a Divisional Officer. —U. P. Act XII of 1936, S. 6 and Sch., item 5. [w. e. f. 13-3-1937].

#### Section 67 — Note 1

[1] Government for preventing intersection of canal and stream, constructing a super-bridge—Expert advice drawing Government's attention to danger to neighbouring lands being flooded — Practice of removing silt observed for many years but discontinued as being expensive and not necessary for purposes of canal authorities — Plaintiff's lands over-flooded — Suit for damages and injunction is cognizable by civil Courts — Discontinuance amounts to unreasonable conduct or negligence — Government must pay damages to plaintiff. 1928 All 735 (737, 738) [AIR V 15] (DB).

#### Section 68 — Note 1

[1] Where differences arise between the parties regarding water-course, the aggrieved party should apply to the Divisional Canal-Officer and his order thereon will be final. The validity of such order can be in a civil Court within one year from the date of passing the order failing which the suit will be barred by Art. 14 of the Limitation Act. ('93) 1893 Pun Re No. 25 p. 132 (136) (DB).

[2] Civil Courts are only concerned with

the legal rights of the parties. If by reason of injury to some person's legal rights an order passed by a canal officer under S. 68 is found to be defective, the order can only be set aside as a whole and it is then for the canal officer to draw up a new list of turns from which the defect has been removed. It is impossible for Civil Courts to go into the difficult work of allocation of turns as if they were canal officers. ('45) 47 Pun L R 73 (73).

[3] Divisional Canal Officer has jurisdiction to decide differences even after warabandi is fixed. 1929 Lah 263 (261) [AIR V 16].

[4] If the Divisional Officer omits to serve notice on any of the parties interested in the enquiry under S. 68, his proceedings must be held to be vitiated on that account. 1933 Lah 76 (77) [AIR V 20].

[5] Where a party who is aggrieved by an order of Executive Engineer passed under S. 68, granting an application for a new warabandi brings a suit in a Civil Court to set it aside, the burden of showing that the order is unjust and inequitable or otherwise improper lies on him. 1937 Lah 448 (449) [AIR V 24] (DB).

**69. Power to summon and examine witnesses.**

Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the \*Code of Civil Procedure, and every such inquiry shall be deemed a judicial proceeding.

[a] See now the Code of Civil Procedure, 1908 (Act V of 1908).

**PART X****OF OFFENCES AND PENALTIES****70. Offences under Act.**

Whoever, without proper authority and voluntarily, does any of the acts following, that is to say :—

- (1) damages, alters, enlarges or obstructs any canal or drainage-work ;
- (2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage-work ;
- (3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage-work ;
- (4) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorised distribution of the water therefrom, or uses such water in an unauthorised manner ;
- (5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used ;
- (6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the \* [State Government] for entering or navigating such canal ;
- (7) while navigating on any canal, neglects to take proper precautions for the safety of the canal and of vessels thereon ;
- (8) being liable to furnish labourers under Part VIII of this Act, fails without reasonable cause, to supply or to assist in supplying the labourers required of him ;
- (9) being a labourer liable to supply his labour under Part VIII of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour ;

**Section 70 — Note 1**

[1] Before a person can be convicted under S. 70, there must be a clear finding of fact that there was a recognized water course for passage of water which has been demolished or damaged or altered. In the absence of such a finding the person cannot be held to be guilty under S. 70. ('50) ILR (1950) All 780 (783). (Unless, it is shown that a channel was a well-recognized one through which the people of the locality had a right to take water, it cannot be said to be a water course.)

[2] A tube well was constructed in February 1946. A and B, his neighbour, used to take water from the well through a channel constructed in A's field after the well was constructed. A demolished the channel in October 1946. There was no clear finding that it was a well-recognized channel through which people of the locality had a right to take water — *Held*, that A could not be held guilty of an offence under S. 70. ('50) ILR (1950) All 780 (782, 783).

[3] Where a water course belongs to a person and is on his land and another is per-

mitted by him to take water through that course to his field, a discontinuance of the permission by the owner and removal of the water course by him is not an offence under S. 70. 1942 All 102 (103) [AIR V 29] : ILR (1942) All 162 : 43 Cri L Jour 472.

[4] The preventing of the digging of a water course for taking water from a canal, does not come within S. 70. 1915 Lah 392 (392) [AIR V 2] : 16 Cri L Jour 202.

[5] "Internal distribution" in a village by the village community is not an authorised distribution within S. 70 (4) as it is not formally approved or sanctioned by any canal authority. 1920 Lah 317 (317, 318) [AIR V 7] : 1 Lah 604 : 22 Cri L Jour 203 (DB). (Disturbing the arrangement of the village community does not justify conviction.)

[6] A distribution by the proprietary body only is not authorised distribution within S. 70 (4). 1920 Lah 317 (317) [AIR V 7] : 1 Lah 604 : 22 Cri L Jour 203 (DB).

[7] A right to obtain the passage of water over another man's property can be secured legally by the Canal Department acting on its



- (10) destroys or moves any level-mark or water-gauge fixed by the authority of a public servant ;
- (11) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of a canal or drainage-work contrary to rules made under this Act, after he has been desired to desist therefrom ;
- (12) violates any rule made under this Act, for breach whereof a penalty may be incurred ;

#### Penalty.

shall be liable, on conviction before a Magistrate of such class as the <sup>A</sup>[State Government] directs in this behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both.

#### STATE AMENDMENTS

##### PUNJAB

- (i) In clause (2) of S. 70, before the word "interferes", the words "except by the construction of a tube-well" shall be deemed to be *inserted*.
- (ii) Clauses (6) to (9) of the said section shall be deemed to be *omitted*.

— Punj. Act XXI of 1954, S. 4.

##### UTTAR PRADESH

Same as those of Punjab—U. P. Act XII of 1936, S. 6 and Sch., item 6. [w.e.f. 13-3-1937].

#### 71. Saving of prosecution under other laws.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act :

Provided that no person shall be punished twice for the same offence.

#### Section 70 — Note 1 (*contd.*)

own authority or it can be obtained on the application of a private person to the Divisional Canal Officer under section 21 of the Act. Such a right can also be obtained by a private agreement. But where one person merely permits another to take water on a water course existing on the former's land and then discontinues the permission and stops the water course, he is not guilty under section 70. The Act in no way contemplates that one man has a right to the passage of water for his fields through the fields of another except that such right is derived in any of these ways from the Canal Authorities or obtained by private agreement. 1921 Lah 327 (327, 328) [AIR V 8] : 22 Cri L Jour 429.

[8] In revenge for the offence committed by the accused, he was attacked by certain persons one of whom used a kahi, and the bone of his nose was shattered into several fragments — *Held* that under such circumstances the maximum sentence of one month's rigorous imprisonment was not necessary but that 15 days' rigorous imprisonment was enough. 1925 Lah 279 (1) (279) [AIR V 12].

[9] A general accusation of breach of rules made under S. 70 is wholly inadequate. 1930 Lah 54 (55) [AIR V 17] : 31 Cri L Jour 528.

[10] In order to prove an offence under S. 430 it is necessary to prove mischief as defined in S. 425 and it is also necessary to prove that the act committed is likely to cause a diminution of the supply of water for the various purposes mentioned in the section. Where all that was proved was that the accused forcibly opened the canal distributory and apparently diverted the flow of the water but there was nothing to show that

they permanently diminished the utility of the distributory or affected it injuriously or that they practically diminished the supply of the water — *Held*, that the accused were liable to be convicted under S. 70 and not under S. 430, I. P. C. 1934 All 687 (2) (688) [AIR V 21] : 35 Cri L Jour 1250.

[11] A traveller without a permit is *prima facie* an unauthorised person and is not converted into an authorised person merely because he was a practising lawyer on his way to attend a Magistrate's Court. 1943 Lah 298 (301) [AIR V 30] : 45 Cri L Jour 149 (DB).

[12] The mere fact of travelling over the Canal Inspection Road without a permit is no offence under S. 70 (ii), Northern India Canal and Drainage Act, the essence of the offence being that a person should continue to travel after he has been desired to desist therefrom. 1943 Lah 298 (299) [AIR V 30] : 45 Cri L Jour 149 (DB).

[13] Use of water for building is not punishable. Section 70 (12) punishes a person who violates any rule made under the Act for a breach of which a penalty may be incurred. The use of water from a tank which has been filled with canal water for building of a pucca house, though not authorised under Rule 10 of section 31, is not penalised by any section of the Act and is therefore not punishable. 1921 Lah 187 (2) (188) [AIR V 8] : 23 Cri L Jour 17.

[14] Water course flowing over land — Owner demolishing it — Complainant not having right of user of water course — Act of owner is with authority. 1960 All 656 (657) [AIR V 47 C 192] : 1960 Cri L Jour 1388 (DB).

**72. Compensation to person injured.**

Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

**73. Power to arrest without warrant.**

Any person in charge of or employed upon any canal or drainage-work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest police-station, to be dealt with according to law, any person who, within his view, commits any of the following offences :—

- (1) wilfully damages or obstructs any canal or drainage-work :
- (2) without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, damage or render less useful any canal or drainage-work.

**74. Definition of "canal".**

In this Part the word "canal" shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by the <sup>A</sup>[State Government] for the purposes of canals, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by or belonging to the <sup>A</sup>[State Government] upon such lands.

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## PART XI

### OF SUBSIDIARY RULES

**75. Power to make, alter and cancel rules.**

The <sup>A</sup>[State Government] may, from time to time <sup>A</sup>[\* \* \* \*] make rules<sup>aa</sup> to regulate the following matters :—

- (1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;
- (2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable ;
- (3) the persons by whom, <sup>b</sup>[and] the time, place or manner at or in which anything for the doing of which provision is made under this Act, shall be done ;
- (4) the amount of any charge made under this Act ; and
- (5) generally to carry out the provisions of this Act.

The <sup>A</sup>[State Government] may from time to time <sup>a</sup>[\* \* \* \*] alter or cancel any rules so made.

**Publication of rules.**

Such rules, alterations and cancelments shall be published in the Official Gazette, and shall thereupon have the force of law.

[a] The words "subject to the control of the Governor-General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920). [aa] Uttar Pradesh—For rules see U. P. Gazette 1889, Pt. I, page 399; *ibid.*, 1936, Pt. I, pages 1021, 1166; *ibid.*, 1924, Pt. I, page 575; *ibid.*, 1940, Pt. 1A, page 533. [b] Inserted by the Amending Act, 1891 (XII of 1891). [c] The words "subject to the like control" were omitted by Act XXXVIII of 1920.

**SCHEDULE.** [*Repealed by the Repealing Act, 1873 (XII of 1873), S. 1 and Sch., Pt. II.*]

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#### Section 75 — Note 1

[1] Rule 70. Petitioner objected that he did not do irrigating, did not use canal water and was not liable to pay water rate — Case falls under R. 70—Appeal lies before Commissioner. 1955 N U C (Punj) 1369 [AIR V 42].

# [THE] NORTHERN INDIA FERRIES ACT, 1878

(ACT XVII of 1878)

[The Act printed here is as on 1-10-1960.]

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## STATEMENT OF OBJECTS AND REASONS

"An Act for the regulation of ferries in the Punjab is much needed. Up to the 1st June 1872, when Act No. IV of 1872 (the Punjab Laws Act) came into force, ferries in the Punjab were governed by Bengal Regulation VI of 1819; but by the Punjab Laws Act that Regulation was inadvertently repealed, and, no other law being substituted for it, there has from that date been no law for the control of ferries in the Punjab. Another result is that, as the law now stands, it would be difficult for the Local Government to prevent an unlicensed person from setting up a rival ferry alongside of a Government ferry, and thus materially reducing the income of the

latter ferry and the funds available for its maintenance.

To remedy this state of things, and at the same time to provide generally for the regulation of Government ferries, a Bill to regulate ferries in the Punjab was prepared. About the same time the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh submitted a draft Bill for the regulation of ferries in the territories under his administration. The Bill, so submitted, and the Bill for the Punjab, as modified and supplemented in accordance with communications subsequently received from the Punjab, were found to differ so little, that it was

thought advisable to amalgamate the two Bills, and accordingly the present Bill, extending to the Punjab, the North-Western Provinces and Oudh, has been prepared.

The Bill is based upon the Burma Ferries Act, II of 1873, and the provisions of that Act

have been followed as closely as the different circumstances and requirements of the Provinces with which this Bill deals would permit.

\* \* \* \* \*

—Gaz. of Ind., 1878, Part V, page 135.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act III of 1886.

—Adapted by A. O., 1937 ; A. C. A. O., 1948 ; A. L. O., 1950 ; 2 A. L. O., 1956 ; M. P. A. L. O., 1956.

—Amended in—

Ajmer-Merwara by Act VI of 1945.

Assam by Acts XXV of 1953 ; XXIV of 1959.

Central Provinces by Acts I of 1883 ; XII of 1891 ; IV of 1907 ; and by C. P. Acts I of 1931 ; XXIII of 1937.

Madhya Pradesh by Act XXIII of 1958.

Orissa by Acts XV of 1948 ; XXII of 1950 ; XXIII of 1950.

Punjab by Acts XX of 1883 ; XII of 1891 ;

Sambalpur District by Acts I of 1883 ; XII of 1891 ; by Beng. Act I of 1911 ; by Orissa Act VI of 1939.

United Provinces by U. P. Act I of 1914 ; XXIX of 1948 ; VIII of 1960.

—Extended in—

Madhya Pradesh by M. P. Acts XII of 1950 ; XXIII of 1958.

Punjab by Punj. Act V of 1950.

—Repealed in part and amended by Act XXXVIII of 1920.

—Repealed in part by Acts XII of 1891 ; II of 1901 ; I of 1938.

—Repealed in Vidarbha by Bom. Act LX of 1959.

## [THE] NORTHERN INDIA FERRIES ACT, 1878

(ACT XVII OF 1878)<sup>a</sup>

[9th November, 1878.]

*An Act to regulate Ferries in Northern India.*

### Preamble

WHEREAS it is expedient to regulate ferries in <sup>b</sup>[Uttar Pradesh, Punjab, the Central Provinces, Assam, Delhi and Ajmer]; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gazette of India, 1878, Pt. V., p. 135 ; for Preliminary Report of the Select Committee, see *ibid*, page 210.

This Act applies to the Lakhimpur Frontier Tract, and to the Sadiya and Balipara Frontier Tracts in Assam, subject to certain modifications, see Assam Government notification No. 442-CS & 443-CS, dated 26th January, 1940.

It has been extended to the States merged in the State of—

Madhya Pradesh : see M. P. Act XII of 1950, Section 3. [3-4-1950].

Punjab : see Punj. Act V of 1950, S. 3. [15-4-1950].

[b] *Substituted* for "the United Provinces, East Punjab, the Central Provinces, Assam, Delhi and Ajmer-Merwara" by A. L. O. 1950. [26-1-1950].

### I.—PRELIMINARY

#### 1. Short title.

This Act may be called THE NORTHERN INDIA FERRIES ACT, 1878.

#### Local extent.

<sup>a</sup>[It extends only to Uttar Pradesh, Punjab, the Central Provinces,<sup>b</sup> Assam, Delhi and Ajmer.]

#### Commencement.

It shall come into force in each of the said territories on such date<sup>c</sup> as the State Government may, by notification in the Official Gazette, fix in this behalf.

[a] Paragraph 2 has been successively amended so as to read as above, by A. C. A. O., 1948 and A. L. O., 1950. [b] This Act as in force in the Mahakoshal region of Madhya Pradesh is extended to and shall be in force in all the other regions of that State — M. P. Act XXIII of 1958, S. 3 (1).

In its application to the Vidarbha region of the State of Bombay (now Maharashtra) this Act is repealed—Bom. Act LX of 1959, S. 19. [19-10-1959].

[c] The Act was brought into force in Punjab on 1-4-1881, see Punj. Gaz., 1881, Pt. I, p. 139; in U. P., on 1-1-1879, see N. W. P. and Oudh Gaz., 1878, Pt. I, p. 2035 ; in Assam on 1-4-1879, see Assam Gaz., 1879, Pt. I, p. 187.

### STATE AMENDMENT

#### MADHYA PRADESH

In its application to the State of Madhya Pradesh, in section 1—

(a) in second paragraph, for the words "Central Provinces" substitute "Madhya Pradesh" ;

(b) for the third paragraph substitute the following :

"It shall be in force in all such territories in which it was in force immediately before the commencement of the Madhya Pradesh Extension of Laws Act, 1958 and shall come into force on the commencement of the said Act in all such regions of Madhya Pradesh in which it was not in force before such commencement."

— M. P. Act XXIII of 1958, S. 3 & Sch.

**2. Repeal.** [*Repealed by the Repealing Act, 1938 (I of 1938), S. 2 and Sch.*]

**3. Interpretation-clause.**

In this Act the word "ferry" includes also a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry <sup>a</sup>[and "Punjab" and "Ajmer" mean the territories which, immediately before the 1st November, 1956, were comprised in the States of Punjab and Ajmer respectively].

[a] *Added by 2 A. L. O., 1956. [1-11-1956].*

## II.—PUBLIC FERRIES

**4. Power to declare, establish, define and discontinue public ferries.**

The <sup>a</sup>[State Government] may from time to time—

- (a) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate ;
- (b) take possession of a private ferry and declare it to be a public ferry ;
- (c) establish new public ferries where, in its opinion, they are needed ;
- (d) define the limits of any public ferry ;
- (e) change the course of any public ferry ; and
- (f) discontinue any public ferry which it deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the Official Gazette :

<sup>a</sup>[Provided that when a river lies between two <sup>a</sup>[States,] the powers conferred by this section shall, in respect of such river, be exercised jointly by the <sup>a</sup>[State Governments] of those <sup>a</sup>[States] by notifications in their respective Official Gazettes <sup>b</sup>[\* \* \*].]

Provided also that, when any alteration in course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the Commissioner of the Division in which such ferry is situate, or by such other officer as the <sup>a</sup>[State Government] may, from time to time, appoint by name or in virtue of his office in this behalf.

[a] *Substituted for the original Proviso by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I, Pt. I. [b] The words "and in any case where the said Local Governments fail to agree as regards the exercise of any such power they shall exercise such power subject to the control of the Governor-General in Council" were omitted by A. O., 1937. [1-4-1937].*

### Section 3 — Note 1

[1] The word "ferry" in ordinary parlance does not include a pucca bridge over which vehicles and persons may pass in order to cross a river. A pucca bridge which is a part of highway is not therefore included within the definition in S. 3 nor can it be said to be an approach to or landing-place of a ferry. Under S. 4 the Government has a right to declare only ferries to be public ferries. It cannot declare pucca bridges to be public ferries. No toll tax can therefore be levied for crossing such bridges. 1956 All 7 (8) [AIR V 43 C 4].

### Section 4 — Note 1

[1] Where the course of a river has changed and there has been no specification of limits

under S. 4 subsequent to the change, a conviction under S. 28 for working ferry within the previously prohibited limits, is bad. (10) 11 Cri L Jour 595 (596) (All).

[2] What the notification obviously means is that the banks of the river up and down the stream within a distance of 440 yards would be taken to be parts of the ferry. The Government could never have intended to include in this ferry the bridges and public roads within this distance. The obvious meaning of the notification is that the bank of the river up to that distance would be taken to be parts of the ferry and not every article or thing situate within 440 yards of the ferry. 1956 All 7 (8) [AIR V 43 C 4].

## STATE AMENDMENTS

## AJMER

*Substitute* the words "the Deputy Commissioner" for the words "the Commissioner of the Division in which such ferry is situate".—Act VI of 1945, S. 3 and Sch. II. [16-4-1945].

## UTTAR PRADESH

In the first proviso to S. 4 between the words "two States" and the words "the powers" *insert* the words "to which this Act applies".

— U. P. Act VIII of 1960, S. 2 [w. r.e. f., 22-5-1950].

**5. Claims for compensation.**

Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under section 4, shall be inquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the <sup>A</sup>[State Government].

**6. Superintendence of public ferries.**

The immediate superintendence of every public ferry shall, except as provided in section 7 <sup>A</sup>[and section 7A], be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the <sup>A</sup>[State Government] may, from time to time, appoint by name or in virtue of his office in this behalf;

and such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat.

[a] *Inserted* in the application of the Act to—

The U. P. by the U. P. Local Boards Act, 1883 (XIV of 1883), S. 65.

The Punjab, by the Punjab District Boards Act, 1883 (XX of 1883), S. 79.

The Madhya Pradesh by the C. P. Local Self-Government Act, 1883 (I of 1883), S. 44; and

Assam, by the Assam Local Self-Government Act, 1952 (Assm. XXV of 1953), Chap. VIII, item 2.

But these words are not applicable to Ajmer.

**7. Management may be vested in municipality.**

The <sup>A</sup>[State Government] may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;

<sup>A</sup>[and thereupon that ferry shall be managed accordingly.]

[a] *Substituted* by A. O., 1937 for the following words—

"and may further direct that all or any part of the proceeds from such ferry be paid into the municipal fund of such town;

and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid, accordingly."

**<sup>A</sup>[7A. Management may be vested in District Council or District or Local Board.**

The State Government may direct that any public ferry wholly or partly within the area subject to the authority of a District Council or a District Board or, a Local Board in the State be managed by that Council or Board, and thereupon that ferry shall be managed accordingly.]

[a] *Substituted* for the former section 7A, by A. O., 1937 [1-4-1937].

**Section 6 — Note 1**

[1] The legislature used two different words 'superintendence' and 'managed' in Ss. 6 and 7A. The word 'vested' appears in S. 6 but does not appear in S. 7A. It, therefore, appears that, the rights of a District Board under S. 7A are not of the same nature as the rights of the Magistrate under S. 6. 1958 All 464 (465) [AIR V 45 C 114].

[2] The arrears due from a lessee of the tolls of a public ferry can be recovered by the

Magistrate as an arrear of land revenue. ('59) ILR (1959) Punj 1008 (1015).

**Section 7A — Note 1**

[1] The provisions of the Act are applicable even when the management of a public ferry is transferred to a local body, such as Municipal Committee or District Board, under S. 7 or 7A of the Act. ('59) ILR (1959) Punj 1008 (1014) \* 1958 All 464 (466) [AIR V 45 C 114].

## STATE AMENDMENT

## ASSAM

For section 7A *substitute* the following, namely,—

"7A. The State Government may direct that any public ferry, wholly or partly within the area subject to the authority of an Anchalik Panchayat in the State be managed by the Anchalik Panchayat and thereupon the ferry shall be managed accordingly."

—Assam Act XXIV of 1959, S. 188 & Sch. B.

## \*18. Letting ferry tolls by auction.

The tolls of any public ferry may, from time to time, be let by public auction for a term not exceeding five years with the approval of the Commissioner,<sup>b</sup> or by public auction, or otherwise than by public auction, for any term with the previous sanction of the State Government.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under section 7 or section 7A,<sup>c</sup> then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.]

[a] *Substituted* for the original section by the Northern India Ferries (Amendment) Act, 1886 (III of 1886), S. 1. [b] In its application to Ajmer for the word "Commissioner" *substitute* "Deputy Commissioner", see Act VI of 1945, Sch. II. [c] The words "or section 7A" are inapplicable to Ajmer.

## Section 8 — Note 1

[1] The public ferry remains in the possession of the public authorities and all that is let is a right to collect the tolls of that public ferry. Such a right is not immovable property and the lessee has no right to sue for recovery of possession under S. 9, Specific Relief Act. 1938 All 856 (857) [AIR V 23]: ILR (1937) All 193 (DB).

[2] Reading the Act as a whole, the scheme in respect of settlement of tolls of a public ferry seems to be that the State Government exercises only a power of approval or superintendence under certain cases either before or after the settlement and the Government is not competent to exercise the powers of direct settlement unless it is so empowered by any of the rules framed under S. 12 of the Act which provides for framing of rules subject to the Government control, generally to carry out the purposes of the Act and for the purposes enumerated therein. 1959 Assam 209 (210) [AIR V 48 C 46] (DB).

[3] The general principle laid down by S. 8 seems to be that for any period lesser than five years, the settlement of the tolls of any public ferry should normally be by public auction subject to the approval of the Commissioner or the Chief Engineer. But in case of some emergency or for special reasons, the Government might take the case out of the general rule of settlement by public auction. What is required under S. 8 is that the Government should decide earlier as to the method of the proposed settlement if they want to take the case out of the general rule and the procedure should be sanctioned by it in advance. 1959 Assam 209 (210) [AIR V 48 C 46] (DB).

[4] Settlement of Ferry Rules, Part II, R. 13 — Rule is in no way prejudicial to contents of S. 8. ('53) ILR (1953) 5 Assam 380 (387).

[5] The powers exercised by the Chief Engineer under paragraph 50 of the Code, were exercisable, under the notification by the Additional Chief Engineer. The power exercised by the Chief Engineer under the provisions of the Northern India Ferries Act is an administrative power and, in the absence of any clear definition of the word 'Chief Engineer,' the power under R. 19 (b) of the Rules framed under S. 12 of the Northern India Ferries Act could be, by notification, exercised by the Additional Chief Engineer. The provisions of R. 19 (a) and (b) clearly give power to the Chief Engineer or, the Additional Chief Engineer, not to accept the highest bid and to direct settlement with any other bidder. There is nothing in this rule which makes it obligatory for the Chief Engineer to accept only the price offered by a bidder at the auction sale, and not to accept any higher price even if offered by him. But the Chief Engineer cannot reject the highest bid unless he records his reasons in writing for so doing. It is not a discretion to be exercised arbitrarily. If the reasons are recorded by the Chief Engineer, they may be examined by the High Court under Art. 226 of the Constitution. Where there are no reasons recorded in writing by the Additional Chief Engineer and the only writing is a telegram which was sent by the Additional Chief Engineer to the Executive Engineer, that is not a compliance with the provision of R. 19 (b) and cannot be said to be recording reasons for disapproval of the bid accepted by the officer conducting the sale. Apart from this

**9. Recovery of arrears from lessee.**

All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land-revenue.

**10. Power to cancel lease.**

The <sup>A</sup>[State Government] may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the <sup>A</sup>[State Government], award.

**OBJECTS AND REASONS**

"It has been objected that the period of notice (six months) required by section 10 for the cancellation of a ferry lease is too long, 'especially with reference to the grave public inconvenience that might be caused by the prolonged continuance in his position of a lessee whose conduct might not be satisfactory.' On this we would observe that the case of a lessee whose conduct is unsatisfactory seems to be sufficiently provided for by

section 24, which gives power to cancel a lease at once for any breach of rule; and when it is desired to cancel a lease on any other ground, as e.g., with a view to introducing some improved means of communication, we do not consider the period of six months excessive. Lessees can scarcely be expected to make satisfactory arrangements if they are liable to be arbitrarily ejected on short notice."—S.C.R.

**11. Surrender of lease.**

The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the <sup>A</sup>[State Government] of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate, subject to the approval of the Commissioner, may in each case, direct.

**Section 8 — Note 1 (contd.)**

rule, S. 8 also points to the same conclusion. 1959 Assam 107 (107, 108) [A I R V 46 C 23] (DB).

[6] The right to collect tolls on ferry was sold by public auction. The Chief Engineer however settled the right in favour of third party who offered a higher amount, without assigning reasons for rejecting highest bidder. On the application of the highest bidder the order was set aside by the High Court and the Chief Engineer was directed to consider matter and pass order in accordance with R. 19 (b) of the Rules framed under the Act. But that officer referred the matter to Government, which then passed an order for dropping the proposal to sell the right by public auction and directing also the resettlement of the right in favour of the third party. *Held*, that although the Government initially had a right to choose the procedure by which it would settle the right it could not after having chosen the method once change its mind and adopt a new procedure which had the effect of circumventing the order of the Court. But although the order of the Government could be cancelled on that ground the Court could not grant a writ of *mandamus* directing the grant of the permit to the petitioner. The only order that could be issued was to direct the Chief Engineer to apply his mind to the question and pass such order as was permissible under law. 1959 Assam 169 (170) [A I R V 46 C 36] (DB).

**Section 9 — Note 1**

[1] The proprietary right in and over as well as all control of a public ferry continue to remain with the State, even where its limited management is transferred to the Municipal Committee or the District Board. The rents and compensation, even though they may be payable to the public body to which the management is transferred, are to form part of the revenues of the State. The arrears due from a lessee of the tolls of a public ferry can be recovered by the Magistrate as arrears of land revenue. ('59) ILR(1959)Punj 1008 (1015).

[2] The conditions necessary for taking action under S. 9 are : (1) Public ferry, (2) lease to collect tolls, and (3) arrears due by the lessee. Where all these conditions are fulfilled it is open to the District Board to take action under S. 9. The remedy under S. 9 is available even when management of a public ferry is made over to a District Board under S. 7-A. 1958 All 464 (466) [AIR V 45 C 114].

[But see 1950 Lah 193 (195) [A I R V 37 C 60] : Pak L R (1950) Lah 711.]

**Section 11 — Note 1**

[1] The compensation which a lessee ought to pay in respect of the surrender is to be determined by the District Magistrate and till that is determined and paid the lessee would be responsible to pay rent under the lease. Jurisdiction of Civil Courts to go into the matter is expressly barred by S. 34. ('59) ILR (1959) Punj 1008 (1016).



## STATE AMENDMENTS

## AJMER

For the word "Commissioner" substitute the words "Deputy Commissioner".—Act VI of 1945, Sch. II.

## UTTAR PRADESH

In section 11, for the words "one month's notice" substitute the words "three months' notice".—U. P. Act XXIX of 1948, S. 2.

**12. Power to make rules.**

Subject to the control of the State Government, the Commissioner of a division, or such other officer as the State Government may, from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act—

- (a) for the control and the management of all public ferries within such division and for regulating the traffic at such ferries ;
  - \*[(b) for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted ;]
  - (c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for ; and
  - (d) generally to carry out the purposes of this Act ;
- and, when the tolls of a ferry have been let under section 8, such Commissioner or other officer may, from time to time (subject as aforesaid), make additional rules consistent with this Act—
- (e) for collecting the rents payable for the tolls of such ferries ;
  - (f) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swingbridge, flying-bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and rafts through the same ; and
  - (g) in cases in which the traffic is conveyed in boats, for regulating (1) the number and kind of such boats and their dimensions and equipment ; (2) the number of the crew to be kept by the lessee for each boat ; (3) the maintenance of such boats continually in good condition ; (4) the hours during which, and the intervals within which, the lessee shall be bound to ply ; and (5) the number of passengers, animals and vehicles, and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may, from time to time, require.

[a] Substituted by the Northern India Ferries (Amendment) Act, 1886 (III of 1886) S. 1 (2).

**Section 12 — Note 1**

[1] Where the highest bid at an auction sale of public ferry for a period of one year, is accepted by the sub-divisional Officer and the 1/4 price is deposited by the bidder the sale becomes complete and the Deputy Commissioner has no jurisdiction thereafter to direct a re-sale of the ferry. Rule 13 merely deals with certain proposals which deviate from the requirements of Rules 11 and 12. It has got no application at all to completed auction sales in which the highest bid is accepted and the deposit required by the rules has been made. Rules 19 to 21 read together show that the sale becomes complete when the final bid is accepted by the officer conducting the sale. The implication of these rules is that no confirmation is needed. There is also no provision

in the rules for confirmation of the order of the sub-divisional Officer by the Deputy Commissioner. Rules 13 and 14 do not give any such power to the Deputy Commissioner. There is also no provision for appeals in the rules. ('53) ILR (1953) 5 Assam 380 (381).

[2] The Deputy Commissioner by general power of Superintendence or Control cannot rescind the settlement. The power of the Deputy Commissioner to cancel a lease is given under the Rules and it is only at that stage that he can interfere. ('53) I L R (1953) 5 Assam 380 (383, 384).

[3] Rule 13 framed under S. 12 of the Act is in no way prejudicial to the contents of S. 8. ('53) ILR (1953) 5 Assam 380 (382).

## STATE AMENDMENT

## AJMER

In section 12 for the words "the Commissioner of a division" the words "the Deputy Commissioner" shall be substituted; the words "within such division" in clause (a) shall be omitted; and for the word "Commissioner" where it occurs for the second and third time the words "Deputy Commissioner" shall be substituted.—Act VI of 1945, Sch. II.

### 13. Private ferry not to ply within two miles of public ferry without sanction.

\*[Except with the sanction of the Magistrate of the district or of such other officer as the State Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry] :

Provided that, in the case of any specified public ferry, the State Government may, by notification in the Official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit :

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats<sup>b</sup> [which do not ply for hire or] which the State Government expressly exempts<sup>c</sup> from the operation of this section.

[a] Substituted by the Northern India Ferries (Amendment) Act, 1886 (III of 1886), S. 2.

[b] Inserted, *ibid.* [c] Assam—For exemption in favour of I. G. N. R. and R. S. N. Company's Steamer Services on the Brahmaputra between Dhubri and Dibrugarh to come into force from 1-11-1952, *see* Assam Gaz., 1953, Pt. II-A, page 18.

## STATE AMENDMENT

## MADHYA PRADESH

After the second proviso, insert the following : —

"*Explanation.* — The expression 'boats which do not ply for hire' used in the second proviso shall not include boats, which, with a view to cause loss to a lessee, carry passengers free of charge."

— C. P. Act XXIII of 1937, S. 2 [10-2-1937] and M. P. Act XXIII of 1958, S. 3 (1).

### 14. Person using approaches, etc., liable to pay toll.

Whoever uses the approach to, or landing-place of, a public ferry is liable to pay the toll payable for crossing such ferry.

### 15. Tolls.

\*Tolls, according to such rates as are, from time to time, fixed by the State Government, shall be levied on all persons, animals, vehicles and other things

## Section 13 — Note 1

[1] The words used in S. 13 are "within a distance of two miles from the limits of a public ferry" and there is no reason why the distance contemplated by the section should be taken to be other than the shortest distance between the two points. The riverine distance between the two points on the bank cannot be taken because it may vary from time to time and according to seasons and does not seem to have been contemplated by S. 13. 1948 All 299 (299, 300) [AIR V 35 C 120] : ILR (1948) All 320 : 49 Cri L Jour 378 (DB).

the highway to the landing place. 1933 Lah 890 (890) [AIR V 20].

[2] By merely declaring a particular land as approach to the ferry, the rights of the public or an individual over and in the land cannot be taken away or destroyed. The words "whoever uses the approach" mean that the use of the land must be as an approach to a ferry. The land will be used as an approach to a ferry only if it is used for the purpose of crossing the river. Persons who exercise right as members of the public over the approach land which forms part of the highway, cannot be said to be using the approach land as an approach to a ferry. Mere user of the highway as a member of the public will not make a person liable to pay toll under S. 14 of the Act. 1960 Assam 67 (69) [AIR V 47 C 22].

## Section 14 — Note 1

[1] The word "approach" is not limited to the distance between the landing place and the riverbank and includes an approach from

crossing any river by a public ferry and not employed or transmitted on the public service :

Provided that the State Government may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the <sup>b</sup>[lease], shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the division or such other officer as the State Government may, from time to time, appoint in this behalf by name or in virtue of his office.

[a] So much of S. 15 is *repealed* as provides for the exemption from payment of tolls of any persons, animals, vehicles or other things exempted by S. 3 of the Indian Tolls (Army and Air Force) Act, 1901 (2 of 1901); *see* S. 8 of that Act. [b] *Substituted* by the Northern India Ferries (Amendment) Act, 1886 (III of 1886), S. 1.

#### STATE AMENDMENT

AJMER

For the words "Commissioner of the division" substitute the words "the Deputy Commissioner". — Act VI of 1945, Sch. II.

#### 16. Table of tolls.

The lessee or other person authorised to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language and also, if the Commissioner of the division so directs, in English, in some conspicuous place near the ferry.

#### List of tolls.

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf.

#### STATE AMENDMENT

AJMER

Same as that given under section 15.

#### <sup>a</sup>[17. Tolls, rents, compensation and fines are to form part of revenues of State.

All tolls, rents, compensation and fines under this Act (other than tolls received by any lessee) shall form part of the revenues of the State<sup>b</sup>.]

[a] *Substituted* by A. O., 1937 [1-4-1937]. [b] *See* however section 27.

#### STATE AMENDMENT

#### SAMBALPUR DISTRICT (ORISSA)

(i) Existing section 17 shall be *numbered* as sub-section (1) of section 17 and to the said sub-section the following proviso shall be *added*, namely —

"Provided that, where the ferry is entrusted to management of a local authority under section 7 or section 7A, the receipts from tolls, rents, fines and compensation received under this Act shall not be revenues of the State and shall be disposed of as provided in sub-section (2)."

(ii) The following shall be *inserted* as sub-section (2) of section 17, namely : — "The sums received as tolls, rents, fines and compensation under this Act by a local authority entrusted with the management of a ferry under section 7 or section 7A shall, in the first instance, be applied to defraying all charges incurred by it in carrying out this Act and shall then be credited to the funds of the said local authority."

—The Sambalpur Local Self Government Act, 1939 (Orissa Act VI of 1939) S. 3 and Sch. III [20-10-1939].

NOTE.—The same amendments have also been made in section 17 of this Act by the following Orissa Acts, namely,—The Orissa Gram Panchayats Act, 1948 (XV of 1948), Sch. I; The Orissa Local Government Act, 1949 (XXII of 1950), Sch. II; The Orissa Municipal Act, 1950 (XXIII of 1950), Sch. II.

#### Section 17 — Note 1

[1] The proprietary right in and over as well as all control of a public ferry continue to remain with the State even where its limited management is transferred to the Municipal Committee or District Board. The rents and

compensation, even though they may be payable to the public body to which the management is transferred, are to form part of the revenue of the State. ('59) 1 L R (1959) Punj 1008 (1015).

**18. Compounding for tolls.**

The State Government may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry.

**III.—PRIVATE FERRIES****19. Power to make rules.**

The Commissioner of the division may, with the previous sanction of the State Government, from time to time, make rules<sup>a</sup> for the maintenance of order and for the safety of passengers and property at ferries other than public ferries.

[a] For the Orissa Private Ferries Rules, 1954, see Orissa Gaz., 1954, Pt. III, page 228.

**STATE AMENDMENT****AJMER**

Same as that given under section 15.

**20. Tolls.**

The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under section 15 for similar public ferries.

**IV.—PENALTIES AND CRIMINAL PROCEDURE****21. Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic.**

Every lessee or other person authorised to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 16,

or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 16,

and every lessee who neglects to furnish any return required under section 12,

shall be punished with fine which may extend to fifty rupees.

**22. Penalty for taking unauthorised toll, and for causing delay.**

Every such lessee or other person as aforesaid and any person in possession of a private ferry asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

**23. Penalty for breach of rules made under sections 12 and 19.**

Every person breaking any rule made under section 12 or section 19 shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

**Section 19 — Note 1**

[1] Section 19 gives power to the Commissioner to make rules only (1) for the maintenance of order and (2) for the safety of passengers and property at private ferries. Any rule which does not come within these two classes is beyond his powers. The Commissioner cannot make a rule prohibiting the establishment of another ferry and such a rule would be ultra vires, and a breach of such a rule is no offence and cannot be made the basis of a conviction. 1952 All 795 (795) [AIR V 39] : ILR (1950) All 283.

**Section 22 — Note 1**

[1] It is not an offence to ask or take less than the authorized toll either once or habitually. (187) 1887 Pun Re (Cr) No. 65, p. 177 (177) (DB).

[2] It cannot be said that when there is no toll, any amount charged as toll does not come under S. 22. No toll being chargeable, any sum charged as toll must be deemed to be a charge in excess and therefore punishable under S. 88. 1948 All 100 (101) [AIR V 55 C 43] : I L R (1947) All 841 : 49 Cri L Jour 42 (1).

**24. Cancellation of lease on default or breach of rules.**

When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 23, or, having been convicted of an offence under section 21 or section 22, is again convicted of an offence under either of those sections,

the Magistrate of the district may, with the sanction of the Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

**STATE AMENDMENT****AJMER**

Same as that given under section 15.

**25. Penalties on passengers offending.**

Every person crossing by any public ferry, or using the approach to, or landing place thereof, who refuses to pay the proper toll, and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes or takes any animals, vehicles or other things into any ferry-boat, or upon any bridge, at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles or goods from, any such ferry-boat or bridge, on being requested by such toll-collector, lessee or assistant to do so,

shall be punished with fine which may extend to fifty rupees\*.

[a] The offence under this section is cognizable—See section 29.

**\*[26. Penalty for maintaining private ferry within prohibited limits.**

Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions.]

[a] Substituted for the original section by the Northern India Ferries (Amendment) Act, 1886 (III of 1886), S. 2.

**27. Fines payable to lessee.**

Where the tolls of any public ferry have been let under the provisions hereinbefore contained, the whole or any portion of any fine realised under section 25 or section 26 may, notwithstanding anything contained in section 17, be at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

**28. Penalty for rash navigation and stacking of timber.**

\*Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall

**Section 25 — Note 1**

[1] Section 4, First Offender's Probation Act, has no application to a case where a person commits an offence under S. 25 by not paying the proper toll at ferry and the accused cannot be released on giving security as that would allow him to escape payment of toll altogether. 1945 All 206 (207) [A I R V 32] : ILR (1945) All 270 : 46 Cri L Jour 743.

**Section 26 — Note 1**

[1] Where the course of a river has changed and there has been no subsequent specification of limits under S. 4, a conviction for working ferry within the previously prohibited limits is bad. (10) 11 Cri L Jour 595 (596) (All).

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry or any of his assistants, may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

[a] The offence under this section is cognizable—See S. 29.

### **29. Power to arrest without warrant.**

The police may arrest without warrant any person committing an offence against section 25 or section 28.

#### **OBJECTS AND REASONS**

"The Police have been empowered (section 29) to arrest without warrant persons committing offences against sections 25 and 28. As such offences will accordingly be "cognizable" within the meaning of the Criminal Procedure Code, sections 95, 96 and 97

of that Code will apply; and toll-collectors under the Bill will, as regards their right to assistance from the Police, be substantially in the same position as toll-collectors under the Roads and Bridges Act VIII of 1851." [Now entitled "The Indian Tolls Act, 1851".]

— S. C. B.

### **30. Power to try summarily.**

Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII of the Code of Criminal Procedure<sup>1</sup> may try any offence against this Act in manner provided by that Chapter.

[a] See now the Code of Criminal Procedure, 1898 (3 of 1898), Ch. XXII.

### **31. Magistrate may assess damage done by offender.**

Every Magistrate or Bench of Magistrates trying any offence under this Act may enquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or when the offence is one under section 28, by the sale of the vessel, raft or timber causing the damage, and of any thing found in or upon such vessel or raft.

The Commissioner of the division may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

#### **STATE AMENDMENT**

##### **AJMER**

Same as that given under section 15.

#### **V.—MISCELLANEOUS**

### **32. Power to take possession of boats, etc., on surrender or cancellation of lease.**

When the lease of the tolls of any ferry is surrendered under section 11 or cancelled under section 24, the Magistrate of the district may take possession of all boats and their equipment, and all other material and appliances, used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the State Government may in each case direct) until such Magistrate can conveniently procure proper substitutes therefor.

### **33. Similar power in cases of emergency.**

When any boats or their equipment, or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of <sup>a</sup>[the Government of India] on duty, or of any other persons on the business of Government, or of any animals, vehicles or baggage belonging to such officers, troops or persons, or of any property of <sup>b</sup>[Government], the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as <sup>c</sup>[the Central Government

(where the transport is in connection with the affairs of the Central Government) and the State Government in other cases] may in each case direct) until such transport is completed.

[a] *Substituted* for the words "Her Majesty", where they occurred first in this section, by A.L.O., 1950 [28-1-1950]. [b] *Substituted* for "Her Majesty", *ibid.* [c] *Substituted* for "the Local Government" by A.O., 1937 [1-4-1937].

### 34. Jurisdiction of Civil Courts barred.

No suit to ascertain the amount of any compensation payable, or abatement of rent allowable, under this Act shall be cognizable by any Civil Court.

### 35. Delegation of powers.

The State Government may, from time to time, delegate, under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any Commissioner of a division or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office.

#### STATE AMENDMENT

#### AJMR

Same as that given under section 15.

**36.** Validation of proceedings since repeal of Regulation VI of 1819 in Punjab. [*Repealed by the Repealing and Amending Act, 1891 (12 of 1891), S. 2 and Sch. I, Pt. 1.*]

## [THE] NORTH-WESTERN PROVINCES AND OUDH ACT, 1890

(Act XX of 1890)

[The Act printed here is as on 1-10-1960.]

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#### Section 34 — Note 1

[1] The compensation which a lessee ought to pay in respect of the surrender is to be determined by the District Magistrate and till that is determined and paid the lessee would be responsible to pay rent under the lease. Jurisdiction of civil Courts to go into the matter is expressly barred by S. 34. (59) I L R (1959) Punj 1008 (1016).

[2] Section 34 does not exclude the jurisdiction of the civil Court to hear and dispose of

a suit by a lessee of a public ferry under the control of the P. W. D. claiming additional remuneration for employment of labour which he had to engage under the directions of the Sub-Divisional Officer for plying an additional marboot for meeting needs arising out of the war situation. The jurisdiction of Civil Courts is not excluded in suits not answering the description given in that section. 1952 Assam 147 (148) [AIR V 39].

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by A. O., 1937; A. L. O. 1950.

—Repealed in part by Acts XII of 1891; XII of 1896; II of 1899; I of 1938.

By U. P. Acts V of 1894; III of 1899; II of 1901; III of 1901; I of 1903; IV of 1925.

## [THE] NORTH-WESTERN PROVINCES AND OUDH ACT, 1890

(ACT XX OF 1890)\*

[16th October, 1890.]

*An Act to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh.*

WHEREAS it is expedient to provide for the better administration of the territories respectively administered by the <sup>b</sup>Lieutenant-Governor of the <sup>a</sup>North-Western Provinces and the <sup>b</sup>Chief Commissioner of Oudh, and for that purpose to amend certain enactments which are in force in the said Provinces and in Oudh; It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1890, Pt. V, p. 121 and for Report of Select Committee, see *ibid.*, p. 135. [b] Now Governor of Uttar Pradesh.

[c] The territories known as the North-Western Provinces came to be known as Agra from 22-3-1902—see U. P. General Clauses Act, 1904 (U. P. Act I of 1904), S. 4 (4).

**1. Title.**

This Act may be called THE NORTH-WESTERN PROVINCES AND OUDH ACT, 1890.

## PART I

## THE NORTH-WESTERN PROVINCES

**2. Commencement of Part I.**

This Part shall come into force on such day<sup>a</sup> as the said Lieutenant-Governor may, by notification in the Official Gazette, direct.

[a] The 1st April, 1891, see North-Western Provinces and Oudh Gazette, 1891, Pt. I, p. 130.

**3 and 4. Amendment of Act XIX of 1873.** [*Repealed by the United Provinces Land Revenue Act, 1901* (U. P. Act III of 1901)].

And whereas it has been determined to annex the Jhansi Division, comprising the districts of Jhansi, Jalaun and Lalatpur, to the Allahabad Division;

And whereas the said Jhansi Division is a scheduled district under the Scheduled Districts Act, 1874;<sup>a</sup>

And whereas it is expedient that the law in force in the same division should, on such annexation, be the same as the law in force in the temporarily-settled districts comprised in the Allahabad Division, and that the said division should cease to be a scheduled District;

It is hereby enacted as follows:—

[a] Since *repealed* by A. O., 1937.

**5. Laws in force in certain districts of the Allahabad Division to apply to Jhansi.**

(1) All enactments which shall on the day<sup>a</sup> when this Part comes into force be in force in the said temporarily-settled districts and not in the said Jhansi Division shall be deemed to come into force in that division on and from the said day.

(2) Except the Jhansi Encumbered Estates Act, 1882,<sup>b</sup> and the Jhansi and Morar Act, 1886,<sup>c</sup> all enactments which shall on the said day<sup>a</sup> be in force in the said division and not in the said temporarily-settled districts, including the Jhansi Courts Act, 1867, and Act No. 27 of 1867, shall be deemed to be repealed on and from the said day<sup>a</sup> in the said division.

[a] That is, the 1st April, 1891. [b] *Repealed* by the Bundelkhand Encumbered Estates Act, 1903 (U. P. Act I of 1903). [c] *Repealed* by the Repealing and Amending Act, 1953 (XLII of 1953), S. 2 and Sch. I [25-12-1953].



**6. Amendment of Act XVI of 1882.** [*Repealed by the Bundelkhand Encumbered Estates Act, 1903 (U. P. Act I of 1903).*]

**7. Discharge of functions assigned to Deputy Commissioner and Commissioner by Act 17 of 1886.**

The functions assigned to the Deputy Commissioner and the Commissioner by the Jhansi and Morar Act, 1886,<sup>a</sup> shall be discharged by the District Judge and the High Court, respectively, and references to Courts in the Jhansi district subordinate to the Commissioner shall be deemed to apply to the Civil Courts established in that district under the Bengal, <sup>b</sup>North-Western Provinces and Assam Civil Courts Act, 1887.

[a] Repealed by the Repealing and Amending Act, 1953 (XLII of 1953), S. 2 and Sch. I [23-12-1953]. [b] "Agra" has been substituted for "North-Western Provinces" by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (XVI of 1911).

**8. Jhansi Division to cease to be a Scheduled District.**

(1) On and from the said day<sup>a</sup> the said division shall cease to be a scheduled district <sup>b</sup>[\* \* \*].

[a] That is, the 1st April 1891. [b] The second clause of sub-s. (1), and sub-s. (2) were omitted by the Repealing Act, 1938 (I of 1938), S. 2 and Sch.

**9. Application of Act 12 of 1887 to Jhansi, and disposal of pending cases.**

<sup>a</sup>[\* \* \* \* \*]

(2) All cases or proceedings pending in any Civil Court in the said division on the said day<sup>b</sup> shall be disposed of as follows :

- (a) if pending in the Court of a Tahsildar or of an Assistant Commissioner of the second class—by the Munsif ;
- (b) if pending in the Court of an Assistant Commissioner of the first class—by the Subordinate Judge ;
- (c) if pending in the Court of a Deputy Commissioner—by the District Judge ;
- (d) if pending in the Court of the Commissioner—by the District Judge, unless the case pending is an appeal from a decree or order of the Deputy Commissioner, in which case the appeal shall be disposed of by the High Court.

(3) For the purposes of sections 20 to 22, both inclusive, of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, all decrees and orders passed by Civil Courts in the said division and not appealed against before the said day<sup>b</sup> shall be deemed—

- (a) if passed by the Court of a Tahildar or an Assistant Commissioner of the second class—to have been passed by a Munsif ;
- (b) if passed by the Court of an Assistant Commissioner of the first class—to have been passed by a Subordinate Judge ;
- (c) if passed by the Court of a Deputy Commissioner or the Commissioner—to have been passed by a District Judge.

(4) Where any Civil Court ceases by reason of the passing of this Act to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court to which the business of the former Court is transferred by sub-section (2) ; but this sub-section shall not apply to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure.<sup>4</sup>

(5) In the case of appeals from the decrees and orders mentioned in sub-section (3) the period of limitation shall be calculated in accordance with the

provisions of section 15 of the Jhansi Courts Act, 1867\*, as though this Act had not been passed.

[a] Sub-section (1) was *omitted* by the Repealing Act, 1938 (I of 1938), S. 2 and Sch. [b] That is, the 1st April, 1891. [c] "Agra" has been *substituted* for "North-Western Provinces" by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (XVI of 1911). [d] See now the Code of Civil Procedure, 1908 (5 of 1908). [e] Act XVIII of 1867 *repealed* by S. 5 (2) of this Act.

## PART II

### OUDH

#### 10. Commencement of Part II.

This Part shall come into force on such day<sup>a</sup> as the Chief Commissioner of Oudh may, by notification in the Official Gazette, direct.

[a] 1st January, 1891, *see* the North-Western Provinces and Oudh Gazette, 1890, Pt. I, page 661.

#### 11.<sup>a</sup> Board of Revenue of the North-Western Provinces to be the Board of Revenue of, and Chief Revenue-authority in, Oudh.

(1) On and from the day<sup>b</sup> on which this Part comes into force the Board of Revenue constituted under the North-Western Provinces Land-revenue Act, 1873,<sup>c</sup> shall be deemed to be also the Board of Revenue for the territories administered by the Chief Commissioner of Oudh, and shall be known and designated as the Board of Revenue of the North-Western Provinces and Oudh.<sup>d</sup>

(2) All references made in any enactment as amended by this Part to the Board of Revenue shall be deemed, so far as they relate to Oudh, to refer to the said Board.

(3) In any enactment for the time being in force in the territories administered by the Chief Commissioner of Oudh, in which the expression "Chief Revenue-authority" or "Chief Controlling Revenue-authority" is used, the expression shall, subject to the provisions of any enactment passed after the said day<sup>b</sup>, be construed, so far as the said territories are concerned, as referring to the Board of Revenue of the North-Western Provinces and Oudh.<sup>d</sup>

[a] Section 11 shall stand unmodified—A. O., 1937 [1-4-1937]. [b] 1st January 1891.

[c] Since repealed by the U. P. Land Revenue Act, 1901 (U. P. Act III of 1901), S. 2, but not so as to affect anything done under the Agra Land Revenue Act, 1873 (XIX of 1873); *see* S. 3. [d] Now the Board of Revenue of Uttar Pradesh.

#### 12. to 53. [NOTE.—These sections amended certain number of Central Acts. These sections have subsequently been repealed by various Central and U. P. Acts.]

#### 54. Pending appeals.

All appeals pending when this Part comes into force<sup>a</sup> from decrees or orders passed under the same Act shall be disposed of as if this Act had not been passed :

Provided that the <sup>a</sup>[State Government] may, by order, transfer to the District Judge any appeals then pending before the Commissioner or Collector in cases in which the appeal will, under the Oudh Rent Act, 1886,<sup>b</sup> as amended by this Part, lie to the District Judge.

[a] That is, the 1st January 1891. [b] Now repealed by the U. P. Tenancy Act, 1939 (U. P. Act XVII of 1939).

#### 55. to 61. [NOTE. — Sections 55 to 60 amended Act XXII of 1886 and S. 61 amended Act IX of 1881. These sections were subsequently repealed.]

## PART III

## THE NORTH-WESTERN PROVINCES AND OUDH

**62. Commencement of Part III.**

This part shall come into force on such day<sup>a</sup> as the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh may, by notification in the Official Gazette, direct.

[a] 1st January, 1891, *see* the North-Western Provinces and Oudh Gazette, 1890, Pt. I, p. 661.

**63. Place where the Board may sit.**

(1) Notwithstanding anything<sup>a</sup> [in section 128 of the Oudh Rent Act, 1886 the Board of Revenue of the North-Western Provinces and Oudh shall, for the disposal of cases under those Acts, sit in such place or places in the North-Western Provinces or Oudh as the <sup>a</sup>[State Government] may, by notification<sup>b</sup> in the Official Gazette, appoint in respect to cases under either of those Acts.

(2) For the disposal of cases other than those referred to in sub-section (1) the said Board may, subject to the orders of the <sup>a</sup>[State Government], sit in any place in the North-Western Provinces or Oudh that the Board thinks fit.

[a] Section 63, so far as it relates to Act XII of 1881, that is the words "in S. 152 of the North-Western Provinces Rent Act, 1881, or," was repealed by the Agra Tenancy Act, 1901 (U. P. Act II of 1901). [b] For notification declaring that the Board of Revenue may sit at the head-quarters of any district of the United Provinces, *see* U. P. Local Rules and Orders.

**64.** Amendment of section 4, Act XIX of 1873. [*Repealed by the United Provinces Land Revenue Act, 1901 (U. P. Act III of 1901).*]

## [THE] NOTARIES ACT, 1952

## (ACT LIII OF 1952)

[The Act printed here is as on 1-10-1960.]

## C O N T E N T S

## SECTIONS

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| 7. Seal of notaries.  | 15. Power to make rules.   |
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## STATEMENT OF OBJECTS AND REASONS

"Under section 138 of the Negotiable Instruments Act, 1881, the Government of India have the power to appoint notaries public, but only for the limited purpose of performing functions under that Act. By virtue of an ancient English Statute, the Master of Faculties in England used to appoint notaries public in India for performing all recognised notarial functions, but it is no longer appropriate that persons in this country who wish to function

as notaries should derive their authority from an institution in the United Kingdom.

The object of the present Bill is to empower the Central and State Governments to appoint notaries, not only for the limited purposes of the Negotiable Instruments Act, but generally for all recognised notarial purposes, and to regulate the profession of such notaries.

A Bill on the subject was accordingly introduced in the provisional Parliament on the

19th April, 1951 and referred to a Select Committee on the 18th August, 1951. The report of the Select Committee was presented on the 4th October, 1951, but the Bill could not be proceeded with in the last session of Parlia-

ment for want of time and, therefore, lapsed. Apart from one or two minor drafting changes, the present Bill follows closely the Notaries Bill, 1951, as amended by the Select Committee."—Gaz. of Ind., 1952, Pt. II-Sec. 2, p. 166.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by 3 A. L. O., 1956; Central Acts on State and Concurrent subjects (Maharashtra Adaptation) Order, 1960.

—Repealed in part by Act XXXVI of 1957.

### [THE] NOTARIES ACT, 1952

(ACT LIII OF 1952)<sup>a</sup>

[9th August, 1952.]

*An Act to regulate the profession of notaries.*

BE it enacted by Parliament as follows :

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1952, Pt. II-Sec. 2, p. 166 and for Report of the Select Committee, see *ibid*, p. 319.

#### 1. Short title, extent and commencement.

(1) This Act may be called THE NOTARIES ACT, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date<sup>a</sup> as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 14-2-1956, see S. R. O. 317 published in Gaz. of Ind., 1956, Extra., Pt. II-Sec. 3, p. 179.

#### 2. Definitions.

In this Act, unless the context otherwise requires,—

(a) "India" means the territories to which this Act extends ;

(b) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded ;

#### OBJECTS AND REASONS

"In order to make the definition of 'instrument' more comprehensive, the Committee 'modified' and 'suspended' and have amended cl. (2) (b) accordingly."

—S. C. R.

(c) "legal practitioner" means any advocate or agent of the Supreme Court or any advocate, vakil or attorney of any High Court or any pleader authorized under any law for the time being in force to practise in any court of law.

#### OBJECTS AND REASONS

"In the definition of 'legal practitioner' in cl. 2 (c) the Committee think that agents of included and have also slightly redrafted the clause to make the intention clear."

—S. C. R.

(d) "notary" means a person appointed as such under this Act :

Provided that for a period of two years from the commencement<sup>a</sup> of this Act it shall include also a person who, before such commencement was appointed a notary public either under the Negotiable Instruments Act, 1881, or by the Master of Faculties<sup>b</sup> in England, and is, immediately before such commencement, in practice in any part of India;

[a] That is 14-2-1956. [b] The Archbishop of Canterbury (England) has a Court (really an office) called the Court of Faculties and also an officer called the Master of the Faculties, who deals with applications for the admission and removal of notaries public. He has inherent jurisdiction to strike the name of any notary public off the roll of notaries public for misconduct.—"The Dictionary of English Law" by Earl Jowitt, 1959 Edn., page 777.

Note.—Under S. 138 of the Negotiable Instruments Act, 1881, the Government of India has power to appoint notaries public for the limited purposes of performing functions under that Act. Till the passing of the present Act, notaries public in India, for performing all notarial functions, were appointed by the Master of Faculties in

England. This practice is abolished by this Act, but a person who before the commencement was appointed a notary public either under the Negotiable Instruments Act 1881, or by the Master of Faculties in England, shall continue to be a notary for a period of two years from the commencement of this Act.

- (e) "prescribed" means prescribed by rules made under this Act ;
- (f) "Register" means a Register of Notaries maintained by the Government under section 4;
- (g) \*["State Government", in relation to a Union Territory, means, the administrator thereof.]

[a] *Substituted* for the original clause (g), by S A. L. O., 1956 [1-11-1956].

### 3. Power to appoint notaries.

The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications<sup>a</sup> as may be prescribed.

[a] For the qualifications for appointment as a notary, see Rule 3 of the Notaries Rules, 1956.

### OBJECTS AND REASONS

The Committee are of opinion that it is not desirable to discriminate among notaries and to appoint some notaries to perform only a limited class of functions mentioned in cl. 8 [now S. 8]. The words "on such conditions, if any, as it thinks fit" [which occurred in the Bill after the word 'may'] have been omitted accordingly."—S. C. R.

### 4. Registers.

(1) The Central Government and every State Government shall maintain, in such form as may be prescribed, a Register of the notaries appointed by that Government and entitled to practise as such under this Act.

(2) Every such Register shall include the following particulars about the notary whose name is entered therein, namely :—

- (a) his full name, date of birth, residential and professional address;
- (b) the date on which his name, is entered in the Register;
- (c) his qualifications; and
- (d) any other particulars which may be prescribed.

### 5. Entry of names in the Register and issue or renewal of certificates of practice.

(1) Every notary who intends to practise as such shall, on payment to the Government appointing him of the prescribed fee, if any, be entitled—

- (a) to have his name entered in the Register maintained by that Government under section 4, and
- (b) to a certificate authorizing him to practise for a period of three years from the date on which the certificate is issued to him.

(2) Every such notary who wishes to continue to practise after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, be entitled to have his certificate of practice renewed for three years at a time.

### SECTION 5-A

### STATE AMENDMENT

#### MAHARASHTRA

After S. 5, insert the following :—

"5A. *Special provision regarding register of notaries for the State of Maharashtra.* — (1) Notwithstanding anything contained in this Act, the State Government of Maharashtra may by order published in the Official Gazette amend the Register, maintained before the 1st day of May 1960 by the State Government of Bombay, by deleting therefrom the name of any notary whose professional address as recorded in the Register, falls outside the State of Maharashtra :

Provided that, before passing any order as aforesaid, the State Government of Maharashtra, shall make such inquiry as it deems necessary, and give an opportunity to the person concerned to make his representation, if any.

(2) After the amendment of the Register as aforesaid,—

(a) the Register as so amended shall for all purposes of this Act be deemed to be the Register for the State of Maharashtra; and

(b) all persons whose names remain thereon, shall (for the residue of the period for which they were appointed by the State Government of Bombay), be deemed to have been appointed by the State Government of Maharashtra; and accordingly, the certificates of practice issued to them under section 5 shall be amended so as to restrict their area of practice to the State of Maharashtra.”

—The Central Acts on State and Concurrent Subjects (Maharashtra Adaptation) Order, 1960 [w. r. e. f. 1-5-1960].

## 6. Annual publication of lists of notaries.

The Central Government and every State Government shall, during the month of January each year, publish in the Official Gazette a list of notaries appointed by that Government and in practice at the beginning of that year together with such details pertaining to them as may be prescribed.

## 7. Seal of notaries.

Every notary shall have and use, as occasion may arise, a seal of such form and design as may be prescribed.

## 8. Functions of notaries.

(1) A notary may do all or any of the following acts by virtue of his office, namely :—

- (a) verify, authenticate, certify or attest the execution of any instrument;
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;
- (c) note or protest<sup>a</sup> the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881, or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;
- (e) administer oath to, or take affidavit from, any person;
- (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;
- (h) translate, and verify the translation of, any document from one language into another;
- (i) any other act which may be prescribed.

(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

[a] For the meaning of 'protest' see Negotiable Instruments Act, 1881 (XXVI of 1881), S. 100.

Note.—“Bottomry” means a contract by which money is borrowed on the security of a ship.

## 9. Bar of practice without certificate.

(1) Subject to the provisions of this section, no person shall practise as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him under section 5 :

Provided that nothing in this sub-section shall apply to the presentation of any promissory note, hundi or bill of exchange for acceptance or payment by the clerk of a notary acting on behalf of such notary.

(2) Nothing contained in sub-section (1) shall, until the expiry of two years from the commencement<sup>a</sup> of this Act, apply to any such person as is referred to in the proviso to clause (d) of section 2.

[a] That is 14-2-1956.

*Note.*—Violation of these provisions is punishable with imprisonment for a term which may extend to three months, or with fine or with both.

## 10. Removal of names from Register.

The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 the name of the notary if he—

- (a) makes a request to that effect; or
- (b) has not paid any prescribed fee required to be paid by him; or
- (c) is an undischarged insolvent; or
- (d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary.

## 11. Construction of references to notaries public in other laws.

Any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practise under this Act.

## 12. Penalty for falsely representing to be a notary, etc.

Any person who—

- (a) falsely represents that he is a notary without being appointed as such, or
  - (b) practises as a notary or does any notarial act in contravention of section 9,
- shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

## 13. Cognizance of offence.

(1) No Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorized by the Central Government or a State Government by general or special order in this behalf.

(2) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

### OBJECTS AND REASONS

"The Committee consider that protection should be given to notaries in respect of cognizance of offences. They think that protection should be given only to notaries who commit an offence acting or purporting to act in the discharge of their functions under this Act. This clause has been inserted to achieve this object." — S. C. R.

## 14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries.

If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

## 15. Power to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup> to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the qualifications of a notary, the form and manner in which applications

for appointment as a notary may be made and the disposal of such applications;

- (b) the certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;
- (c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, and exemption, whether wholly or in part, from such fees in specified classes of cases;
- (d) the fees payable to a notary for doing any notarial act;
- (e) the form of Registers and the particulars to be entered therein;
- (f) the form and design of the seal of a notary;
- (g) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;
- (h) the acts which a notary may do in addition to those specified in section 8 and the manner in which a notary may perform his functions;
- (i) any other matter which has to be, or may be, prescribed.

[a] For the Notaries Rules, 1956 see Gaz. of Ind., 1956, Extra., Pt. II-Sec. 3, p. 191.

**16.** Amendment of Act XXVI of 1881. [*Repealed by the Repealing and Amending Act, 1957 (XXXVI of 1957), S. 2 and Sch. I.*]

## [THE INDIAN] NURSING COUNCIL ACT, 1947

(ACT XLVIII of 1947)

[The Act printed here is as on 1-10-1960.]

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#### THE SCHEDULE.

#### STATEMENT OF OBJECTS AND REASONS

"Provincial Nursing Councils have been established in all Provinces and maintain registers of qualified nurses, health visitors and midwives. Increasing difficulties have been experienced by the nursing profession and by employing authorities owing to the diversity in the standards of preliminary education of candidates entering training schools of nursing, the varying standards of training and examination for nursing certificates and the lack of inter-provincial reciprocity in the registration of nurses. To remedy

these difficulties it is proposed to enact legislation for the purpose of setting up an Indian Nursing Council which will prescribe uniform minimum standards of education and training for nurses, midwives and health visitors, supervise examinations, and maintain a schedule of qualifications recognised for registration throughout India. To avoid delay an Ordinance was passed in August 1947 for this purpose. The Ordinance will be repealed by this Act."

—Gaz. of Ind., 1947, Part V, page 456.



**[THE INDIAN] NURSING COUNCIL (AMENDMENT) ACT, 1957****STATEMENT OF OBJECTS AND REASONS**

"The objects with which this Bill seeks to amend the Indian Nursing Council Act, 1947 (XLVIII of 1947), are—

(1) to extend the Act to the whole of India except the State of Jammu and Kashmir ;

(2) to make certain changes in the constitution of the Council as now set out in section 3 of the Act, with a view to increase the number of members and in particular—

(i) to provide for the election of two members by the heads of institutions having courses of studies leading to a University degree in nursing or a post-certificate course in teaching and administration, instead of one member by the heads of institutions giving training in nursing administration as at present ;

(ii) to provide that Superintendents of Nursing Services in the States which are for this purpose divided into two groups, shall be members *ex officio* of the Council by rotation. At present four State Directors of Public Health of States to which this Act extends, are made members *ex officio* by rotation ;

(iii) to increase the number of members to be elected by Parliament from two to three and to allocate two seats to the Lok Sabha and one seat to the Rajya Sabha ;

(3) to facilitate the registration of Indian citizens holding foreign qualifications and the temporary registration of foreign nurses who are engaged as nurses or teachers or administrators in hospitals or institutions in India, even though there are no reciprocal arrangements for the recognition of Indian qualifications with the Nurses Registration Councils in the countries where they were trained or registered ;

(4) to empower the Central Government to amend the Schedule listing recognised qualifications ;

(5) to provide for the maintenance of an All India Register of Nurses.

Opportunity has also been taken to make a few other amendments of a formal or minor character."

—Gaz. of Ind., 1957, Extra, Pt. II-S. 2, page 825.

**ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION**

—Amended by Acts LXXV of 1950 ; XLV of 1957.

—Adapted by A. L. O., 1950 ; 3 A. L. O., 1956 ; Andhra (Adaptation of Laws on Union Subjects) Order, 1954.

—Extended in Bombay by Bom. Act IV of 1950.

**[THE INDIAN] NURSING COUNCIL ACT, 1947**

(ACT XLVIII OF 1947)\*

[31st December, 1947.]

*An Act to constitute an Indian Nursing Council.*

WHEREAS it is expedient to constitute an Indian Nursing Council in order to establish a uniform standard of training for nurses, midwives and health visitors ;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1947, Pt. V, page 456.

This Act has been extended to the States merged in the State of Bombay : see Bom. Act IV of 1950, S. 3 and Schedule II, Pt. I [30-3-1950].

**1. Short title, extent and commencement.**

(1) This Act may be called THE INDIAN NURSING COUNCIL ACT, 1947.

(2) \* [It extends to the whole of India except the State of Jammu and Kashmir.]

(3) It shall come into force at once.

[a] Substituted for former sub-section (2), by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 2 [w. e. f. 1-12-1958].

**2. Interpretation.**

In this Act, unless there is anything repugnant in the subject or context,—

(a) "the Council" means the \* [Council] constituted under this Act ;

(b) "prescribed" means prescribed by regulations made under section 16 ;

(c) "A [State] Council" means a Council (by whatever name called) constituted under the law of a \* [State] to regulate the registration of nurses, midwives or health visitors in the \* [State] ;

(d) “<sup>A</sup>[State] register” means a register of nurses, midwives or health visitors maintained under the law of a <sup>A</sup>[State].

b[\* \* \* \* \*].

[a] Substituted for “Indian Council of Nursing”, by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 3 [w. e. f. 1-12-1958]. [b] Omitted, *ibid.*

### 3. Constitution and composition of the Council.

(1) The Central Government shall as soon as may be constitute a Council consisting of the following members, namely :

- (a) one nurse enrolled in a <sup>A</sup>[State] register elected by each <sup>A</sup>[State] Council ;
- <sup>a</sup>[(b) two members elected from among themselves by the heads of institutions recognised by the Council for the purpose of this clause in which training is given—
  - (i) for obtaining a University degree in nursing ; or
  - (ii) in respect of a post-certificate course in the teaching of nursing and in nursing administration ;]
- (c) one member elected from among themselves by the heads of institutions in which health visitors are trained ;
- (d) one member elected by the Medical Council of India ;
- (e) one member elected by the Central Council of the Indian Medical Association ;
- (f) one member elected by the Council of the Trained Nurses Association of India ;
- <sup>b</sup>[(g) one midwife or auxiliary nurse-midwife enrolled in a State register, elected by each of the State Councils in the four groups of States mentioned below, each group of States being taken in rotation in the following order, namely :—
  - (i) Kerala, Madhya Pradesh and Uttar Pradesh,
  - (ii) Andhra Pradesh, Bihar, Bombay and Rajasthan,
  - (iii) Mysore, Punjab and West Bengal,
  - (iv) Assam, Madras and Orissa ;]
- (h) the Director General of Health Services, *ex officio* ;
- (i) the Chief Principal Matron, Medical Directorate, General Headquarters, *ex officio* ;
- (j) the Chief Nursing Superintendent, office of the Director General of Health Services, *ex officio* ;
- (k) the Director of Maternity and Child Welfare, Indian Red Cross Society, *ex officio* ;
- <sup>c</sup>[(l) the Chief Administrative Medical Officer (by whatever name called) of each State other than a Union territory, *ex officio* ;]
- <sup>d</sup>[(m) the Superintendent of Nursing Services (by whatever name called), *ex officio*, from each of the States in the two groups mentioned below, each group of States being taken in rotation in the following order, namely :—
  - (i) Andhra Pradesh, Assam, Bombay, Madhya Pradesh, Madras, Uttar Pradesh and West Bengal ;
  - (ii) Bihar, Kerala, Mysore, Orissa, Punjab and Rajasthan ;]
- (n) four members nominated by the Central Government, of whom at least two shall be nurses, midwives or health visitors enrolled in a <sup>A</sup>[State] register and one shall be an experienced educationalist ;
- <sup>e</sup>[(o) three members elected by Parliament, two by the House of the People from among its members and the other by the Council of States from among its members.]

(2) The President of the Council shall be elected by the members of the Council from among themselves :

Provided that for five years from the first constitution of the Council the President shall be a person nominated from amongst the members of the Council by the Central Government, who shall hold office during the pleasure of the Central Government.

(3) No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council.

[a] *Substituted* for cl. (b), by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 4 [w. e. f. 1-12-1958]. [b] *Substituted* for cl. (g), *ibid.* [c] *Substituted* for cl. (l), *ibid.* [d] *Substituted* for cl. (m), *ibid.* [e] *Substituted* for cl. (o), *ibid.*

*Note.*—For the Statement of Objects and Reasons for the amendments made by Act XLV of 1957, increasing the number of members of the Council, see Gaz. of Ind., 1957, Extra., Pt. II-Sec. 2, page 825.

#### 4. Incorporation of the Council.

The Council constituted under section 3 shall be a body corporate by the name of the Indian Nursing Council, having perpetual succession and a common seal, with power to acquire property both movable and immovable, and shall by the said name sue and be sued.

#### 5. Mode of elections.

(1) Elections under sub-section (1) of section 3 by <sup>a</sup>[State] Councils shall be conducted in accordance with rules made in this behalf by the respective <sup>a</sup>[State] Governments, and where any dispute arises regarding any such election it shall be referred to the <sup>a</sup>[State Government] concerned whose decision shall be final.

(2) Other elections under that sub section shall be conducted in the prescribed manner, and where any dispute arises regarding any such election it shall be referred to the Central Government whose decision shall be final.

#### 6. Term of office and casual vacancies.

(1) Subject to the provisions of this section, an elected or nominated member, other than a nominated President, shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer.

(2) An elected or nominated member may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall thereupon become vacant.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse sufficient in the opinion of the Council from three consecutive meetings of the Council where the interval between the first and third of the said meetings exceeds six months.

(4) A casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Council shall be eligible for re-election or re-nomination.

<sup>a</sup>[ \* \* \* \* \* ]

[a] Sub-section (6) was omitted by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 5 [w.e.f. 1-12-1958].

#### 7. Meetings.

(1) The Council shall hold its first meeting at such time and place as may be appointed by the President, and thereafter the Council shall meet at such time and place as may be appointed by the Council.

(2) Until otherwise prescribed, ten members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

### 8. Officers, committees and servants of the Council.

(1) The Secretary of the Council (who may also, if it is deemed expedient by the Council, act as Treasurer) shall, for three years from the first constitution of the Council, be a person appointed by the Central Government and shall hold office during the pleasure of the Central Government.

(2) The Council shall—

- (a) elect from among its members a Vice-President;
- (b) constitute from among its members an Executive Committee and such other committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act;
- (c) subject to the provisions of sub-section (1), appoint a Secretary, who may also, if deemed expedient, act as Treasurer;
- (d) appoint or nominate such other officers and servants as the Council deems necessary to carry out the purposes of this Act;
- (e) require and take from the Secretary, or from any other officer or servant, such security for the due performance of his duties as the Council deems necessary;
- (f) with the previous sanction of the Central Government, fix the fees and allowances to be paid to the President, Vice-President and members and the pay and allowances of officers and servants of the Council.

### 9. The Executive Committee.

(1) The Executive Committee shall consist of nine members, of whom seven shall be elected by the Council from among its members.

(2) The President and vice-President of the Council shall be members *ex officio* of the Executive Committee, and shall be President and vice-President, respectively, of that Committee.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Executive Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any regulations which may be made in this behalf.

### 10. Recognition of qualifications.

(1) For the purposes of this Act, the qualifications included in <sup>a</sup>[Part I of] the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority within the <sup>a</sup>[States] <sup>b</sup>[° ° °] which, being recognised by the <sup>a</sup>[State] Government <sup>a</sup>[in consultation with the State Council, if any,] for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, <sup>a</sup>[auxiliary nursing-midwifery] health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act.

(3) The Council may enter into negotiations with any authority <sup>c</sup>[in any <sup>a</sup>territory of India to which this Act does not extend] or foreign country <sup>b</sup>[° ° °] which by the law of <sup>a</sup>[such territory] or country is entrusted with the maintenance of a register of nurses, midwives or health visitors, for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any <sup>a</sup>[such territory] or country, or such qualifica-

tion only when granted after a specified date, shall be a recognised qualification for the purposes of this Act :

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice <sup>1</sup>of the foreign country in which the qualification is granted persons domiciled or originating <sup>2</sup>[in India] <sup>3</sup>[• • •] and holding qualifications recognised under this Act are permitted to enter and practise the nursing profession <sup>4</sup>[in that country] :

Provided further that—

(i) any reciprocal arrangements subsisting at the date of the commencement of this Act between a <sup>5</sup>[State] Council and any authority outside India for the recognition of qualifications shall, unless the Council decides otherwise, continue in force, and

<sup>1</sup>(ii) any qualification granted by an authority in a territory of India to which this Act did not extend at the date of its commencement, and recognised on the said date by the State Council of a State to which this Act then extended, shall continue to be a recognised qualification for the purpose of registration in that State.]

(4) The provisions of sub-sections (2) and (3) and of sections 14 and 15 shall apply *mutatis mutandis* to the declaration by the Council of a qualification granted in respect of post-certificate nursing training as a recognised higher qualification.

[a] *Inserted* by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 6 [w. e. f. 1-12-1958]. [b] The words "of India" were *omitted* by A. L. O., 1950 [26-1-1950]. [c] *Substituted* for "in any State or country outside the States," by the Indian Nursing Council (Amendment) Act, 1950 (LXXV of 1950), S. 2 [28-12-1950]. [d] *Substituted* for "Part B State", by 3 A. L. O., 1956 [1-11-1956]. [e] *Substituted* for "such State", *ibid.* [f] *Substituted* for "of the State or country", by Act (LXXV of 1950), S. 2 [28-12-1950]. [g] *Substituted* for "in any State", *ibid.* [h] *Substituted* for "in that State or country" by Act (LXXV of 1950), S. 2 [28-12-1950]. [i] *Substituted* for the original clause by Act (XLV of 1957), S. 6 [w. e. f. 1-12-1958].

## 11. Effect of recognition.

<sup>1</sup>[(1)] Notwithstanding anything contained in any other law,—

(a) any recognised qualification shall be a sufficient qualification for enrolment in any <sup>2</sup>[State] register;

(b) no person shall, after the date of the commencement of this Act, be entitled to be enrolled in any <sup>3</sup>[State] register as a nurse, midwife, <sup>4</sup>[auxiliary nurse-midwife] health visitor, or public health nurse unless he or she holds a recognised qualification :

Provided that any person already enrolled in any <sup>5</sup>[State] register before the said date may continue to be so enrolled notwithstanding that he or she may not hold a recognised qualification :

Provided further that any person who was immediately before the said date entitled to be enrolled in any <sup>6</sup>[State] register but was not so enrolled shall, on application made in this behalf before the expiry of two years from the said date be entitled to be enrolled in that register;

(c) any person holding a recognised higher qualification shall be entitled to have the qualification entered as a supplementary qualification in any <sup>7</sup>[State] register in which he or she is enrolled, and after the said date no person shall be entitled to have entered as a supplementary qualification in any <sup>8</sup>[State] register any qualification which is not a recognised higher qualification.

<sup>9</sup>[(2)] Notwithstanding anything contained in clause (b) of sub-section (1)—

(a) a citizen of India holding a qualification which entitles him or her to be registered with any Council of Nursing or Midwifery (by whatever name called) in any foreign country, may, with the approval of the Council, be enrolled in any State register; and where approval has been

accorded by the Council in respect of such qualification in one case, the approval of the Council for enrolment in a State register in the case of any other citizen of India holding the same qualification shall not be necessary;

- (b) a person not being a citizen of India who is employed as a nurse, midwife, auxiliary nurse-midwife, teacher or administrator in any hospital or institution situated in any State for purposes of teaching, research or charitable work may, with the approval of the President of the Council, be enrolled temporarily in the State register for such period as may be specified in this behalf in the order issued by the said President :

Provided that practice by such person shall be limited to the hospital or institution to which he or she is attached.]

[a] Section 11 was re-numbered as sub-section (1) thereof by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 7 [w. e. f. 1-12-1958]. [b] *Inserted, ibid.*

## 12. Power to require information as to courses of study and training and examinations.

Every authority in any <sup>^</sup>[State] <sup>^</sup>[\* \* \*] which grants a recognised qualification or a recognised higher qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and training and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualifications conferred, and generally as to the requisites for obtaining such qualification.

[a] The words "of India" were omitted by A. L. O., 1950 [26-1-1950].

## 13. Inspections.

(1) The Executive Committee may appoint such number of inspectors <sup>a</sup>[whether from among members of the Council or otherwise] as it deems necessary to inspect any institution recognised as a training institution, and to attend examinations held for the purpose of granting any recognised qualification or recognised higher qualification.

(2) Inspectors appointed under this section shall report to the Executive Committee on the suitability of the institution for the purposes of training and on the adequacy of the training therein, or as the case may be, on the sufficiency of the examinations.

(3) The Executive Committee shall forward a copy of such report to the authority or institution concerned, and shall also forward copies, with the remarks, if any, of the authority or institution concerned thereon, to the Central Government and to the <sup>^</sup>[State] Government and <sup>^</sup>[State] Council of the <sup>^</sup>[State] in which the authority or institution is situated.

[a] *Inserted* by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 8 [w. e. f. 1-12-1958].

## 14. Withdrawal of recognition.

(1) When, upon report by the Executive Committee, it appears to the Council—

- (a) that the courses of study and training and the examinations to be gone through in order to obtain a recognised qualification from any authority in any <sup>^</sup>[State] <sup>^</sup>[\* \* \*], or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or

- (b) that an institution recognised by a <sup>^</sup>[State] Council for the training of nurses, midwives <sup>b</sup>[auxiliary nurse-midwives] or health visitors does not satisfy the requirements of the Council,—

the Council may send to the Government of the <sup>A</sup>[State] in which the authority or institution, as the case may be, is situated a statement to such effect, and the <sup>A</sup>[State] Government shall forward it, along with such remarks as it may think fit to the authority or institution concerned and, in a case referred to in clause (b) to the <sup>A</sup>[State] Council also, with an intimation of the period within which the authority or institution may submit its explanation to the <sup>A</sup>[State] Government.

(2) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of the period, the <sup>A</sup>[State] Government shall make its recommendations to the Council.

(3) The Council, after such further inquiry, if any, as it may think fit to make, and in a case referred to in clause (b) of sub-section (1), after considering any remarks which the <sup>A</sup>[State] Council may have addressed to it, may declare,—

(a) in a case referred to in clause (a) of that sub-section, that the qualifications granted by the authority concerned shall be recognised qualifications only when granted before a specified date, or

(b) in a case referred to in the said clause (b), that with effect from a date specified in the declaration any person holding a recognised qualification whose period of training and study preparatory to the grant to him of the qualification was passed at the institution concerned shall be entitled to be registered only in the <sup>A</sup>[State] in which the institution is situated.

(4) The Council may declare that any recognised qualification granted outside the <sup>A</sup>[States] <sup>A</sup>[ ] shall be a recognised qualification only if granted before a specified date.

[a] The words "of India" were omitted by A. I. O., 1950. [b] Inserted by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 9 [w. e. f. 1-12-1958].

## 15. Mode of declarations.

<sup>A</sup>[(1)] All declarations under section 10 or section 14 shall be made by resolution passed at a meeting of the Council called for the purpose, and shall forthwith be published in the Official Gazette.

<sup>b</sup>[(2) The Central Government shall, from time to time, by notification in the Official Gazette, amend the Schedule so as to bring it into accord with any declaration under section 10 or section 14.]

[a] Section 15 was re-numbered as sub-s. (1) thereof by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 10 [w. e. f. 1-12-1958]. [b] Inserted, *ibid*.

## <sup>A</sup>[15A. Indian Nurses Register.

(1) The Council shall cause to be maintained in the prescribed manner a register of nurses, midwives, auxiliary nurse-midwives and health visitors to be known as the Indian Nurses Register, which shall contain the names of all persons who are for the time being enrolled on any State register.

(2) It shall be the duty of the Secretary of the Council to keep the Indian Nurses Register in accordance with the provisions of this Act, and from time to time, to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India.]

[a] Sections 15-A and 15-B were inserted by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 11 [w. e. f. 1-12-1958].

## <sup>A</sup>[15B. Supply of copies of State registers.

Each State Council shall supply to the Council twenty printed copies of the State register as soon as may be after the 1st day of April of each year and

inform the Council without delay of all additions to, and other amendments in, the State register made from time to time.]

[a] See Foot-note (a) under S. 15-A.

### **16. Power to make regulations.**

(1) The Council may make regulations not inconsistent with this Act generally to carry out the provisions of this Act, and in particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

- (a) the management of the property of the Council and the maintenance and audit of its accounts ;
- (b) the manner in which elections referred to in sub-section (2) of section 5 and in clause (a) of sub-section (2) of section 8 shall be conducted ;
- (c) the summoning and holding of the meetings of the Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum ;
- (d) prescribing the functions of the Executive Committee, the summoning and holding of meetings thereof, the times and places at which such meetings shall be held, and the number of members necessary to constitute a quorum ;
- (e) prescribing the powers and duties of the President and the Vice-President ;
- \*[(f) prescribing the tenure of office and the powers and duties of the Secretary and other officers and servants of the Council ;
- (ff) prescribing the powers and duties of inspectors ;]
- (g) prescribing the standard curricula for the training of nurses, midwives and health visitors, for training courses for teachers of nurses, midwives and health visitors, and for training in nursing administration ;
- (h) prescribing the conditions for admission to courses of training as aforesaid ;
- (i) prescribing the standards of examination and other requirements to be satisfied to secure for qualifications recognition under this Act ;
- (j) any other matter which is to be or may be prescribed under this Act.

(2) To enable the Council to be first constituted, the President may, with the previous sanction of the Central Government, make regulations for the conduct of the elections referred to in sub-section (2) of section 5, and any regulations so made may be altered or rescinded by the Council in exercise of its powers under this section.

[a] *Substituted* for the former clause (f), by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 12 [w. e. f. 1-12-1958].

**17. Repeal of Ordinance XIII of 1947.** [*Repealed by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 13 [w.e.f. 1-12-1958].*]

## \*[THE SCHEDULE

(See sections 10 and 11)

### PART I

#### RECOGNISED QUALIFICATIONS

##### A. — General Nursing—

Certificates (including senior and junior certificates), Diplomas or Degrees in Nursing issued by any of the following authorities, namely:—

1. The Examination Board appointed by the Government of Madras.
2. The Bombay Nurses, Midwives and Health Visitors Council.
3. The Bombay Presidency Nursing Association (when issued before the 1st day of January, 1936).
4. The Bengal Nursing Council (when issued before the 15th day of August, 1947).



5. The Uttar Pradesh State Medical Faculty.
6. The Uttar Pradesh Nurses and Midwives Council.
7. The State Board of Medical Examinations, Uttar Pradesh (when issued before the 1st day of January, 1927).
8. (a) The Punjab Nurses Registration Council (when issued before the 15th day of August, 1947 or after the 26th day of January, 1950).  
(b) The East Punjab Nurses Registration Council (when issued before the 26th day of January, 1950).
9. The Bihar Medical Examination Board (when issued before the 1st day of January, 1938).
10. The Bihar Nurses Registration Council.
11. The Madhya Pradesh Medical Examination Board (when issued before the 1st day of April, 1950).
12. The Assam Nurses, Midwives and Health Visitors Council.
13. The Orissa Medical Examination Board.
14. The Mid-India (United) Board of Examiners for Nurses (when issued before the 1st day of January, 1947).
15. The Joint Missionary Board for Examination of Nurses (Marathi area) (when issued before the 1st day of January, 1934).
16. The North-India United Board of Examiners for Mission and other Hospitals (when issued before the 1st day of January, 1940).
17. The Examining Board of the Nurses Auxiliary of the Christian Medical Association of India (South India Branch).
18. The Sind Nurses and Midwives Council (when issued before the 15th day of August, 1947).
19. The West Bengal Nursing Council.
20. The University of Delhi.
21. The University of Madras.
22. The Bengal State Medical Faculty (when issued before the 1st day of January, 1942).
23. The Mid-India Board of Examiners of Nurses Auxiliary of Christian Medical Association of India.
24. The Examination Board of Military Medical Services (when issued before the 15th day of August, 1955).
25. The Armed Forces Medical Services Examination Board.
26. The Madhya Pradesh State Nurses Registration Council.
27. The Board of Examiners appointed by the Government of Mysore.
28. The Board of Examiners appointed by the Government of Hyderabad (when issued before the 1st day of November, 1956).
29. The Board of Examiners appointed by the Government of Andhra (when issued before the 1st day of November, 1956) or by the Government of Andhra Pradesh (when issued on or after the 1st day of November, 1956).
30. The Travancore-Cochin Nurses' and Midwives' Council.
31. The Vidarbha Nurses Registration Council.

*B.—Midwifery—*

Certificates, Diplomas or Degrees in Midwifery issued by any of the following authorities, namely :—

1. Any of the authorities mentioned in section A except the authority at item No. 17 thereof.
2. The Punjab Central Midwives Board (when issued before the 15th day of August, 1947.)
3. The Mid-India (United) Board of Examiners for Midwifery (when issued before the 1st day of January, 1947).

4. The National Association for supplying female medical aid to the women of India (when issued before the 1st day of October, 1949).
5. The North-West Frontier Province Central Midwives Board (when issued before the 15th day of August, 1947).
6. The Kasturba Gandhi National Memorial Trust.
7. The Health Department, Madras (when issued before the 31st day of December 1952).

*C.—Auxiliary Nursing-Midwifery—*

Certificates issued by any of the following authorities, namely :—

1. Any of the authorities mentioned in section A except items Nos. 3, 4, 7, 9, 11, 14, 15, 16, 18, 20, 21, 22, 24 and 25.
2. The Examination Board appointed by the Himachal Pradesh Administration.

*D.—Health Visitors—*

Health Visitors Certificates or Diplomas issued by any of the following authorities, namely :—

1. The Government Training School for Health Visitors, Madras.
2. The Sir John Anderson Health School, Calcutta.
3. The Uttar Pradesh State Medical Faculty.
4. The Uttar Pradesh Nurses and Midwives Council.
5. The Government Health School, Nagpur.
6. The Assam Nurses, Midwives and Health Visitors Council.
7. The Lady Reading Health School, Delhi.
8. The Bombay Nurses, Midwives and Health Visitors Council.
9. The Bengal Nursing Council (when issued before the 15th day of August, 1947).
10. The Punjab Health School (when issued before the 15th day of August, 1947).
11. The West Bengal Nursing Council.
12. The Punjab State Medical Faculty.
13. The Bengal State Medical Faculty (when issued before the 1st day of January, 1942).
14. The Bihar Nurses Registration Council.

## PART II

### Recognised higher qualifications

Name of the authority issuing the qualification	Qualification.
1. The Examination Board appointed by the Government of Madras.	1. Diploma in Nursing — Sister Tutor Course.
	2. Diploma in Nursing.
	Nursing Administration Course.
2. College of Nursing, New Delhi.	1. Post-certificate course in Public-Health Nursing (when issued before 31st day of December 1953).
	2. Combined post-certificate course in Teaching and Nursing Administration (when issued before the 31st day of August, 1957).
	3. Certificate of examination in Ward Sisters course.
	4. Certificate of Examination in Nursing Administration course.
	5. Certificate of Examination in Sister Tutor Course.
	6. Certificate of Examination in Midwife Tutor Course.

Name of the authority issuing the qualification.	Qualification.
3. The (Missionary) Christian Medical College, School of Nursing, Vellore.	Diploma in Teaching and Supervision (Sister Tutor Course).
4. The School of Nursing, Christian Medical College, Vellore.	Diploma in Teaching and Supervision (Sister Tutor Course.)
5. The Indian Psychiatric Society.	Diploma in Psychiatric Nursing.
6. The All India Institute of Mental Health, Bangalore.	Diploma in Psychiatric Nursing.
7. The All India Institute of Hygiene and Public Health, Calcutta.	Certificate in Public Health Nursing.
8. The Public Health Department, Madras.	Diploma in Public Health Nursing.
9. The Tuberculosis Association of India.	Diploma in Tuberculosis Nursing.]
[a] Substituted for the former Schedule by the Indian Nursing Council (Amendment) Act, 1957 (XLV of 1957), S. 14 [w. e. f. 1.12.1958.]	

## [THE INDIAN] OATHS ACT, 1873 (ACT X OF 1873)

[The Act printed here is as on 1-10-1960]

### C O N T E N T S

#### PREAMBLE

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#### STATEMENT OF OBJECTS AND REASONS

"The object of this Bill is two-fold—to consolidate the law relating to judicial oaths and affirmations, and to repeal the laws requiring declarations to be made by Judges, Magistrates, &c., before entering on their official duties. The Bill, if it become law, will replace twenty-seven enactments.

The Bill does not apply to proceedings

before Courts-Martial, or to oaths prescribed by laws which the Governor-General in Council has not the power to repeal.

Incidentally, the Bill will remove the doubt which has been raised as to the power of the Courts in certain parts of India to administer oaths and affirmations." — Gazette of India, 1873, Part V, page 17.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts VI of 1919; X of 1927; XXXV of 1934; XXXIX of 1939; III of 1951; XXVI of 1955; XVI of 1958.
- Adapted by A. O., 1957; A. C. A. O., 1948; A. L. O., 1959; 2 A. L. O., 1956.

- Extended by Acts LIX of 1949; XXX of 1950; LXVIII of 1956.
- Extended in Bombay by Bom. Act IV of 1950.
- Extended in Punjab by Punj. Act V of 1950.
- Repealed in part by Acts XII of 1873; XII of 1878; VI of 1900; I of 1938.

[8th April, 1873]

*An Act to consolidate the law relating to Judicial Oaths, and for other purposes.*

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations ;

It is hereby enacted as follows :

[a] For the Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 17; for Proceedings in Council, *see, ibid*, 1872, Supplement, p. 889, *ibid*, 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395 and 410; *ibid*, 1873, Extra Supplement, pp. 1 to 8.

For Civil Rules of practice made by the High Court of Madras under this Act, the Code of Civil Procedure (Act XLV of 1882) and certain other Acts, for observance by subordinate Civil Courts in that presidency except the Small Cause Court at Madras, see Fort St. George Gazette, 1905, Supplement, p. 1.

This Act has been declared to be in force in—the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), S. 3; Panth Piploda by the Panth Piploda Laws Regulation, 1929 (I of 1929), S. 2; Khondmals District by the Khondmals Laws Regulation, 1936 (IV of 1936), S. 3 and Sch.; Angul District by the Angul Laws Regulation, 1936 (V of 1936), S. 3 and Sch.

It has further been declared by notification under the Scheduled Districts Act, 1874 (XIV of 1874), S. 3 (a) to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. (The District of Lohardaga then included the Palamau District, separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44).—*See* Gazette of India, 1881, Pt. I, p. 504.

The Northern-Western Provinces Tarai—*See* Gazette of India, 1876. Pt. I, p. 505.

The Schedule Districts in Ganjam and Vizagapatam—See Fort St. George Gazette 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 869.

It has been extended, by notification under S. 5 of the same Act, to the Scheduled District of Coorg—See Gazette of India, 1876, Pt. I, p. 417.

This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950] as amended by Act LXVIII of 1956.

It has also been extended to States merged in the State of Bombay : *see* Bom. Act IV of 1950, S. 3 [30-3-1950]; the State of Punjab : *see* Punj Act V of 1950, S. 3 [15-4-1950.]

## I.—PRELIMINARY

**1. Short title.**

This Act may be called THE INDIAN OATHS ACT, 1873.

**Local extent.**

<sup>a</sup>[It extends to the whole of India except the State of Jammu and Kashmir.]

b [\* \* \* \* \*

[a] *Substituted* for the former clause by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 and Schedule, as amended by Act LXVIII of 1956 [w. e. f. 1-1-1957]. [b] The commencement clause was *omitted* by the Repealing Act, 1876 (XII of 1876).

**2. Repeal of enactments.** [*Repealed by the Repealing Act, 1873 (12 of 1873).*]

### 3. Saving of certain oaths and affirmations.

Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed \* [by the Central Government with respect to members of the Armed Forces of the Union].

[a] *Substituted* for the words "by or under any instruction under the Royal Sign Manual of His Majesty" by A. L. O., 1950 [28-1-1950].

### Preamble — Note 1

[1] Paragraph 16 of the Somaliland Order in Council expressly makes the Indian Evidence Act and the Indian Oaths Act applicable to Somaliland. 1946 P C 3 (5) [AIR V 33 C 2].

## Section 1 — Note 1

[1] Provisions of the Act do not abrogate provisions of Evidence Act. 1928 Nag 194 (195) [AIR V 13].

## II.—AUTHORITY TO ADMINISTER OATHS AND AFFIRMATIONS

### 4. Authority to administer oaths and affirmations.

The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law :—

- (a) all Courts and persons having by law or consent of parties authority to receive evidence;
- (b) the Commanding Officer of any military, <sup>a</sup>[naval], <sup>b</sup>[or air force] station <sup>a</sup>[or ship] occupied by troops in the service of Government :

Provided—

- (1) that the oath or affirmation be administered within the limits of the station, and
- (2) that the oath or affirmation be such as a Justice of the Peace is competent to administer <sup>c</sup>[“ ” “ ”].

[a] *Inserted* by the Amending Act, 1934 (XXXV of 1934), S. 2 and Sch. [b] *Inserted* by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. 1. [c] The words “in Part A States and Part C States” were *omitted* by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

## III.—PERSONS BY WHOM OATHS OR AFFIRMATIONS MUST BE MADE

### 5. Oaths or affirmations to be made by—witnesses :

Oaths or affirmations shall be made by the following persons :—

- (a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;

interpreters :

- (b) interpreters of questions put to, and evidence given by, witnesses; and

jurors.

- (c) jurors.

<sup>a</sup>[Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion

#### Section 4 — Note 1

[1] Section 4 provides that all Courts and persons who have by law or consent of parties authority to receive evidence are Courts or persons authorized to administer oaths or affirmations. 1939 Cal 657 (658) [AIR V 26] : ILR (1939) 2 Cal 459: 41 Cri L Jour 21 (DB)\* 1916 Lah 281 (283) [AIR V 3] : 1916 Pun Re No. (Cr) 34 : 17 Cri L Jour 491 (DB).

[2] A Magistrate is ordinarily empowered to administer oaths or affirmations. 1916 Lah 281 (283) [AIR V 3] : 1916 Pun Re (Cri) No. 34 : 17 Cri L Jour 491 (DB).

[3] Where a Police Sub-Inspector, who had detained a person without any legal authority in the police lock-up filed a false affidavit denying the detention of the person, it was held that the Sub-Inspector had committed an offence punishable under S. 193, I. P. C., because under Ss. 4 and 5, Oaths Act read with S. 14 of that Act the High Court or its officers were authorised to administer the oath and as the Sub-Inspector was stating the facts as evidence before the High Court he had to make the oath or affirmation and was bound to state the truth. 1959 S C 843 (846) [AIR V 46 C 115] : ILR (1959) Punj 1709 : 1959 Cri L Jour 1124.

[4] Vyara Court in Baroda State cannot be treated as a Court within Ss. 4 and 14 in relation to proceedings which were held before that Court entirely under law of that State, and which had nothing to do with any proceedings in British India or under law in force in British India. 1924 Bom 51 (53) [AIR V 11] : 47 Bom 907 : 25 Cri L Jour 333 (DB).

[5] A Magistrate acting under S. 164, Criminal P. C. has power to administer an oath. (1905) 1 Weir 822 (822).

[6] A Commissioner appointed merely to record evidence and submit a report which can at most be treated only as evidence in the suit cannot act for the purposes of Ss. 8, 9 and 10 of the Act. 1957 Nag 47 (51) [AIR V 44 C 14] : ILR (1956) Nag 685 (DB).

#### SECTION 5 — SYNOPSIS

1. Scope and applicability.
2. Oath to child witness.
3. Omission to administer oath.
4. Oath to accused.
5. Criminal proceeding.

1. Scope and applicability.—[1] “Oath or affirmation” in S. 8 and following sections

that, though he understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 6 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.]

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, <sup>b</sup>[unless he is examined as a witness for the defence] or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

[a] Inserted by the Indian Oaths (Amendment) Act, 1939 (XXXIX of 1939), S. 2.

[b] Inserted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 117 and Sch. [w. e. f. 1-1-1956].

### Section 5 — Note 1 (contd.)

is different from that in S. 5, 1927 P C 165 (171) [AIR V 14] : 54 Ind App 301 : 2 Luck 316.

[2] Having regard to the language of the Oaths Act a Court has no option when once it has elected to take the statements of a person as evidence, but to administer to such person either an oath or affirmation as the case may require. (189) 11 All 183 (185) (DB).

[3] In every case where witness is competent within meaning of S. 118, Evidence Act, Ss. 5 and 6 ought to be applied. Oath should not be administered only where it clearly appears that the person does not understand its moral obligation. 1921 Pat 109 (113) [AIR V 8] : 6 Pat L Jour 147 : 22 Cri L Jour 417 (DB).

[4] Under S. 5 of the Oaths Act, oath shall be administered to those witnesses who may be lawfully examined, which means those who can understand the sanctity of oath. A witness may be a competent witness, and yet he may not be in a position to understand the sanctity of an oath. In such a case, S. 13 of the Act comes into play. A witness of this type can be examined without an oath and his testimony is as good as that of witness to whom oath has been administered. 1952 Bhopal 25 (26) [AIR V 39] : 1952 Cri L Jour 1366.

[5] A defendant or even the plaintiff is not bound to go into the witness box, but if either of them chooses to do so he cannot, after he has taken the oath, to make a truthful statement, state anything which is false. Indeed the very sanctity of the oath requires that a person put on oath must state the truth. 1959 S C 843 (846) [AIR V 46 C 115] : ILR (1959) Punj 1709 : 1959 Cri L Jour 1124.

[6] There is no violation of S. 5 if a person proceeded against in an enquiry under Public Servants (Inquiries) Act, 1850, is examined as a witness on oath in the enquiry. 1956 Pat 384 (396) [(S) AIR V 43 C 97] (DB).

**2. Oath to child witness.** — [1] It is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. 1952 S C 54 (56) [A I R V 39] : 1952 S C R 377 : 1952 Cri L Jour 547.

[2] As according to S. 13 of the Oaths Act, even an omission to take the oath does not affect the admissibility of the evidence, it follows that an irregularity arising out of the proviso to S. 5, namely, failure to certify that the child understood the duty to speak the truth, cannot affect the admissibility of evidence. 1952 S C 54 (55) [A I R V 39] : 1952 S C R 377 : 1952 Cri L Jour 547.

[3] The question whether the omission to take an oath referred to in S. 13 applies to a case where the Court deliberately refrains from administering the oath to a witness or only to cases where the omission is due to some accident or negligence can no longer arise now in the case of a child under 12 years of age, because the insertion of the proviso to S. 5 by Act 39 of 1939 settles the law that such an omission can be deliberate. 1946 P C 3 (5) [A I R V 53 C 2] + 1938 Mad 490 (491) [AIR V 25] : 39 Cri L Jour 585 (DB) + (193) 16 Mad 105 (116) (DB). (Per Parker J.) + 1914 Mad 293 (294) [A I R V 1] : 38 Mad 550 : 15 Cri L Jour 161 (DB) + 1942 Oudh 193 (196) [A I R V 29] : 17 Luck 376 : 43 Cri L Jour 243 (DB).

[4] Oath or affirmation is compulsory for every witness—Child is not exception—Omission does not render his evidence absolutely inadmissible. 1939 Rang 402 (403, 404) [A I R V 26] : 1940 Rang L R 104 : 41 Cri L Jour 129 (DB) + 1935 All 579 (581) [AIR V 22] : 58 All 28 : 36 Cri L Jour 1013 (DB).

[5] Child of tender years should be examined as a witness only after the Court has satisfied itself that the child is intellectually sufficiently developed to enable it to understand what it has seen and afterwards inform the Court thereof. If Court is satisfied that child has such intelligence, it should comply with the provisions of S. 6 of the Indian Oaths Act. 1930 Sind 129 (130) [A I R V 17] : 31 Cri L Jour 114.

**3. Omission to administer oath.**—[1] An omission to administer oath, even to an adult, goes only to the credibility of the witness and not his competency. 1952 S C 54 (55) [A I R V 39] : 1952 S C R 377 : 1952 Cri L Jour 547.

[2] The omission to administer to an interpreter under S. 5 (b) of the Oaths Act does not by reason of S. 13 render the evidence of a witness whose evidence was interpreted by him inadmissible against the latter on his subsequent trial for giving false evidence. (1909) 10 Cri L Jour 150 (155) : 36 Cal 808 (DB).

**6. Affirmation by Natives or by persons objecting to oaths.**

Where the witness, interpreter or juror is a Hindu or Muhammadan, or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

**IV. —FORMS OF OATHS AND AFFIRMATIONS****7. Forms of oaths and affirmations.**

All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

[a] The Explanation to S. 7 was omitted by the Lower Courts Act, 1900 (VI of 1900), S. 48 and Sch. II.

**8. Power of Court to tender certain oaths.**

If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding

Section 5 (contd.)

4. Oath to accused. — [1] Section 5 applies to accused under trial. 1927 Cal 307 (308) [AIR V 14] : 54 Cal 52 : 28 Cri L Jour 481 (DB).

[2] A contemner is not an accused person within the meaning of S. 5. 1954 All 523 (537) [A I R V 41 C 214] : 11 L R (1954) 1 All 594 : 1954 Cri L Jour 1141 (FB).

[3] A person becomes an accused person immediately after he has been arrested by the police for an offence which forms the subject-matter of investigation by them. 1947 Lah 92 (96) [A I R V 34 C 20] : 47 Cri L Jour 772 (DB).

[4] A co-accused cannot be examined by an accused as his defence witness as no oath can be administered to him. (147) 1947 Rang L R 214 (218, 219).

[5] An accused who is convicted on his own plea of guilty is a competent witness against his co-accused. The reason is that on his conviction he ceases to be an accused and the bar under S. 5 of the Oaths Act against administration of oath to him cannot apply. 1952 Him Pra 5 (6) [A I R V 39] : 1952 Cri L Jour 114.

[6] Recording confession under S. 164, Criminal P. C., on solemn affirmation is illegal. 1947 Lah 92 (96) [A I R V 34 C 20] : 47 Cri L Jour 772 (DB).

5. Criminal proceeding. — [1] "Criminal proceeding", denotes proceeding before criminal Court as distinguished from civil Court — It does not mean only a proceeding relating to a case pending in a criminal Court. 1947 Lah 92 (96) [A I R V 34 C 20] : 47 Cri L Jour 772 (DB).

[2] An application under S. 526, Criminal P. C., by accused is a criminal proceeding within meaning of S. 5. (105) 1 Weir 822 (822).

[3] An accused who is charged with another accused but whose case is separated before the trial commences so that he can be examined as a witness in the case of the other accused ceases to remain the accused in that case and, therefore, there is no impediment to oath being

administered to him. 1957 Mad 727 (734) [AIR V 44 C 232] : 11 L R (1957) Mad 715 : 1957 Cri L Jour 1287.

**Section 6 — Note 1**

[1] Section 6 expressly exempts witnesses, interpreters and jurors who are Hindus or Muhammadans from making an oath. Hence where a Muhammadan witness is proffered an oath by repetition of Kalma and he declines to take the oath he commits no offence under S. 178, I. P. C. (102) 1902 Pun Re (Cr) No. 20, p. 51 (52).

[2] The offence of giving false evidence may be committed although the person giving evidence has been neither sworn nor affirmed. (192) 19 Cal 355 (358) (DB).

[3] If the Court thinks that the child, though of tender years, is capable of informing the Court of what it has seen or heard, it is best that the Court should comply with the provisions of S. 6 in the case of a child just as in the case of any other witness. 1915 All 437 (438) [A I R V 2] : 38 All 49 : 16 Cri L Jour 829 (DB).

[4] Where the evidence of witnesses is recorded merely on solemn affirmation and no reason is given why oath is not administered, the statements of witnesses are not admissible in evidence. 1952 Hyd 25 (28) [AIR V 39].

**Section 7 — Note 1**

[1] Unsatisfactory nature of oath administered to Indian witnesses in Indian Courts pointed out. 1933 All 834 (835) [AIR V 20] : 55 All 639 : 35 Cri L Jour 359 (DB).

**SECTION 8 — SYNOPSIS**

1. Oath under this section.
2. Agreement to abide by oath.
3. Oath affecting third person.
4. Power of commissioner to tender oath.
5. Form of oath.
6. Criminal proceedings.

by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

### Section 8 (contd.)

**1. Oath under this section.**— [1] Oath under S. 8 is different from that under S. 5—Neither invocation nor oath or affirmation is necessary—No preliminary oath under S. 5 is necessary—Oath under S. 8 is not dependent on any discretion of Court. 1927 P C 165 (170) [A I R V 14] : 54 Ind App 301 : 2 Luck 316.

[2] Use of alternative expression 'oath' and 'solemn affirmation' as special ritual indicates that the ritual is to be at least as solemn for the deponent and attended by same consequences to him as is an ordinary oath or affirmation for and to an ordinary witness. The words were selected primarily to put it beyond doubt that temporal consequences of corrupt falsehood would follow as inevitably for one class of witness as for the other. They are descriptive of nature of result of the ritual; they are in no way concerned with its form. 1927 P C 165 (171) [A I R V 14] : 54 Ind App 301 : 2 Luck 316.

[3] Object of oath is to substitute super-human retribution for falsehood, for earthly punishment. Actual words or ceremonies used for purpose is immaterial. 1924 Oudh 442 (445, 446, 447) [A I R V 11] (DB).

[4] Calling on other party to admit or deny before particular deity and acceptance by other of offer and actual statements before deity by party accepting offer is tantamount to taking oath. Real object of oath is super-human retribution. Purpose of giving oath is not to call attention of God to party but to call attention of party to God. 1924 Oudh 442 (446, 447) [A I R V 11] (DB).

[5] For oath to be administered by Court it is necessary that it should not be against decency and that it should not affect rights of third party. An offer to abide by oath of plaintiff's witness, if taken on talak is not a respectable form of oath. It has the effect of divorcing the wife who is a third party. Hence refusal of party to abide by offer does not affect the case at all. 1940 Pesh 26 (27) [A I R V 27] \* ('10) 1910 Pun L R No. 114, p. 321 (321) : 1910 Pun Re No. 66 (DB).

[6] Where a defendant desires that the plaintiff should be required to appear in Court to state whether or not he is prepared to make a certain statement on solemn affirmation, the order of the Court dismissing the suit on the ground that the plaintiff has disobeyed the order requiring him to attend in person is without jurisdiction, or at all events the Court acts with material irregularity. 1950 Pat 180 (181) [A I R V 37 C 39].

[7] Where a Court administers the oath to a party in spite of the other party's protest and in the result dismisses the suit on that basis, the plaintiff cannot be said to be stopped by the mere fact that a wrong step was taken by the Court. 1957 Nag 47 (52) [A I R V 44 C 14] : ILR (1956) Nag 685 (DB).

### 2. Agreement to abide by oath.—

[1] When an offer made by a party to abide by the statement of the other party made on special oath proposed by him under S. 8 is accepted by the other party upon an inquiry made by the Court under S. 9 a binding agreement comes into existence from which the party making the offer has no right in law to resile. 1948 All 125 (126) [A I R V 35 C 56] : ILR (1947) All 54 (DB) \* 1952 All 882 (886) [A I R V 39] : ILR (1953) 1 All 494 (FB) \* 1952 Pat 208 (209) [A I R V 39] : 31 Pat 91 (DB) \* ('46) 1946 A M L J 32 (33).

[2] Before the Commissioner appointed by the Court to examine accounts, the respondent (plaintiff) offered special oath on him to the appellant (defendant) who accepted the offer. The Commissioner thereon submitted the papers to the Court as he was not competent to administer the oath. When the matter came before the Court, the respondent did not offer as provided by S. 9 to be bound by the special oath of the defendant. The respondent was prepared to offer the special oath of lifting gangajali to the appellant to which the latter did not agree.—*Hec*, that there was neither an offer nor was it agreed to as contemplated by the Act. There was no compliance of S. 9 or S. 10. In this view, the offer and acceptance before the Commissioner (who was not a Court for purposes of the Oaths Act) did not form a binding contract between the parties which the Court was bound to enforce. 1957 Nag 47 (57) [A I R V 44 C 14] : ILR (1956) Nag 685 (DB).

[3] In order to apply Ss. 8 to 11 it is necessary that a party must agree to abide by the special oath of any witness or the opposite party. 1952 All 678 (679) [A I R V 39] : 1952 Cri L Jour 1183.

[4] In a suit, where there is no compliance with the provisions of the Oaths Act the contention that there was at any rate an agreement apart from the Oaths Act and the suit should have been decided in accordance with such an agreement cannot prevail. Case law, discussed. 1957 Nag 47 (52) [A I R V 44 C 14] : ILR (1956) Nag 685 (DB).

[5] It is a rule of prudence that unless both parties agree to be bound by the special oath of a witness or a party, the special oath is not to be administered. 1952 All 678 (679) [A I R V 39] : 1952 Cri L Jour 1183.

[6] It would prima facie appear that a party to the judicial proceeding in Ss. 8 and 9, Oaths Act, would include an advocate of the party also. An advocate empowered as such by a party to enter into a compromise, etc., can make the officer to abide by the special oath under instructions from his client and in the absence of any allegation to the contrary, he must be deemed to have been so instructed. ('59) 1959 Andh L T 32 (34, 35).

[See however 1953 Mad 708 (709) [A I R V 40 C 271.]]

[7] Where one of the plaintiffs is not con-



## 9. Court may ask party or witness whether he will make oath proposed by opposite party.

If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is

### Section 8 — Note 2 (contd.)

ducting the suit under any power of attorney he has no right to bind the other plaintiffs by oath contrary to the provisions of S. 8. 1953 Mad 708 (709) [AIR V 40 C 271.]

**3. Oath affecting third person.**—[1] For a person to be challenged or to make an offer to take an oath on the head of his son is to give evidence on oath not contemplated by S. 8 of the Oaths Act, which specifically requires that the oath should be one not purporting to affect any third person. 1953 Mad 708 (708) [AIR V 40 C 271] + 1952 All 678 (680) [AIR V 39] : 1952 Cri L Jour 1183.

[2] Oath purporting to affect third party ought not to be administered—But considering that such an oath was a form of oath especially binding upon Hindus, statement made upon it was accepted. ('96) 18 All 46 (48) (DB).

[3] Though swearing by son is not opposed to decency among Chamars a party cannot be made to swear by his son because such an oath affects a third person. The idea behind taking an oath of one's son is that in the event of the oath being false some evil may befall the son. In such a case the son is a third party who is thus introduced in a dispute pending between two other parties and hence the oath being against the provisions of S. 8 cannot be administered by a Court. 1952 All 678 (680) [AIR V 39] : 1952 Cri L Jour 1183.

**4. Power of commissioner to tender oath.**—[1] Local commissioner for recording evidence in a case cannot administer oath to one of parties under Ss. 8, 9 and 10 because under the Act he is not a Court. ('09) 1909 Pun Re No. 89, p. 336 (337) (DB) + 1957 Nag 47 (51) [AIR V 44 C 14] : 1 L R (1956) Nag 685 (DB).

**5. Form of oath.**—[1] The oath or solemn affirmation referred to in S. 8 may be in any form common amongst or held binding by persons of the race or persuasion to which "the deponent" belongs and not repugnant to "justice or decency." 1954 Nag 56 (57) [AIR V 41 C 22].

[2] There can be no outside interference in determining the form of the special oath or affirmation contemplated by S. 8, and if it is either common amongst or is held binding by persons of the race or persuasion of the deponent and is not repugnant to justice or decency, and also does not affect a third person, it may be administered to him. The word 'Iman' has a special significance amongst the trading communities where the credit of the deponent is likely to suffer if he makes a false oath or affirmation. The form of oath or affirmation prescribed by the High Court under S. 7 of the Oaths Act does not contain this word which is an invocation by the deponent to all that is good and sanctified in him to witness the ceremony. It is in effect an

invitation to what he holds dear and solemn to help him if he is truthful and to punish him if he is false. This kind of oath is not repugnant to justice or decency and does not affect any third persons. 1957 Nag 47 (50) [AIR V 44 C 14] : 1 L R (1956) Nag 685 (DB).

**6. Criminal proceedings.**—[1] Sections 8 to 11 do not apply to criminal proceedings. ('89) 13 Bom 359 (390, 391) (DB). ("Party to judicial proceeding" does not include either complainant or accused.) + 1947 Sind 66 (68) : [AIR V 34 C 24] : 48 Cri L Jour 700; 1 L R (1948) Kar 437 (DB) + 1921 Bom 425 (426) [AIR V 8] : 45 Bom 96; 21 Cri L Jour 723 (DB). (Proceedings before the Police Patil under Ss. 14 and 15 of the Bombay Village Police Act (VIII of 1867) are essentially criminal proceedings.) + ('12) 13 Cri L Jour 23 (24) : 5 Sind L R 129.

[2] Since the consent of the State cannot be taken and since generally the State does not agree to abide by the oath of any witness, Ss. 8 to 11 do not apply to criminal proceedings. 1952 All 678 (679) [AIR V 39] : 1952 Cri L Jour 1183.

[3] Proceedings under S. 145, Cr. P. C., are proceedings between private individuals. State has no interest in it and is not a party to these proceedings. Nor is the State the prosecutor. In the circumstances there is no reason why sections 8 to 11 should not apply to proceedings under section 145, Cr. P. C. Special Oath can therefore be administered in these proceedings provided both parties agree to abide by the statement of a particular witness or party. 1952 All 678 (679, 680) [AIR V 39] : 1952 Cri L Jour 1183.

[4] Where in proceedings under S. 145, Cr. P. Code, one party gives a Special Oath to the other, and, as a result of that Special Oath, the proceedings are decided on the basis of the oath taken by the party to whom the Special Oath is offered, it is clear that it is the adjudication upon the oath which is res judicata between the parties and not the evidence. 1951 Pat 370 (371) [AIR V 38 C 91] : 25 Pat 441 (DB).

[5] The term 'judicial proceeding' as used in section 8, Oaths Act, means a proceeding in which the court may record evidence and has to make judicial pronouncement on the right of the parties. Applying this test one would come to the conclusion that proceedings in a criminal case are also judicial proceedings. 1952 All 678 (679) [AIR V 39] : 1952 Cri L Jour 1183.

## SECTION 9 — SYNOPSIS

1. Scope.
2. Offer by "any party."
3. Withdrawal of offer.

**1. Scope.**—[1] Application for oath under the Act must be unconditional. To say that if the Court does not hold evidence to be sufficient, defendant should swear by Ganges does

made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

#### Section 9 — Note 1 (contd.)

not amount to offer within S. 9. 1932 All 404 (405) [AIR V 19] (DB).

[2] Under S. 8 initiative should come from parties and it is only under such conditions that special oath can be administered under S. 9. Where suggestion came from Court after the close of evidence and arguments, the decision was set aside. 1933 Cal 116 (116) [AIR V 20].

[3] Proceedings under S. 145, Cr. P. C., being proceedings between private individuals, Special Oath can be administered in such proceedings under the provisions of this Act provided both parties agree to abide by the statement of a particular witness or party. 1952 All 678 (678, 679) [AIR V 39] : 1952 Cri L Jour 1183.

[4] Person making statement on oath on being challenged to do so is, though he is no party to suit, a witness though not summoned and has as much binding force as that of regular witness. (11) 1911 Pun L R No. 245, p. 910 (912).

[5] Sections 9 and 11 of the Act do not require that all parties in a suit should agree to be bound by oath. The evidence given on oath is binding as against those parties who have offered to be bound. 1929 All 759 (759) [AIR V 16] (DB).

[6] Where a party offers to be bound by a Special Oath to be taken by the other party and the other party accepts the offer, there is a completed agreement between the parties even though no oath is taken. Taking of the oath is the performance of the agreement and does not affect its making. 1952 All 882 (885) [AIR V 39] : ILR (1953) 1 All 494 (FB).

[7] An agreement to an oath contained a provision that if owing to the challenger's failure to pay the cost of taking the oath, the same was not taken, it should be treated as equivalent to the oath having been taken — *Held*, that the provision introduced a method of decision which the law did not authorise. 1919 Mad 615 (616) [AIR V 6] (DB).

[8] If the only agreement made by the parties is that a particular decree will be passed if the party took the oath and another decree will be passed if the party did not take the oath, and the party though accepting to take the oath at one time does not take the oath, the agreement cannot be deemed to be an adjustment of the suit on the basis of which a decree can legally be passed. 1959 Punj 252 (253, 254) [AIR V 46 C 80] (DB) \* 1953 Mad 396 (398) [AIR V 40 C 143] \* 1946 Lah 78 (79) [AIR V 33 C 21] \* (08) 31 Mad 1 (3) (DB).

[9] Contract to be bound by opponent's oath is valid contract provided it is oath which Court is permitted to administer under S. 8, Oaths Act. 1923 All 443 (444) [AIR V 10].

[10] Referee, by whose statements parties have agreed to abide, can be re-examined if all points necessary to be established are not put

to him. 1926 All 266 (266) [AIR V 13] : 48 All 276 (DB).

[11] Statement by party in pursuance of agreement made under Oaths Act, is ordinarily binding only as against parties making the offer; but where rights and liabilities of certain parties are inseparable and some of them agree to be bound, agreement is binding on all of them. 1931 Oudh 350 (351) [AIR V 18].

#### *Hindu joint family.*

[12] Hindu father suing or sued in representative character can bind his major and minor sons by special oath. Assent of major sons to representative character may be implied. Consequently, decree passed in such suit against father on special oath, will be binding as *res judicata* under S. 11, Civil P. C., on his sons. 1938 Bom 465 (466, 467) [AIR V 25] \* 1946 Pat 272 (276) [AIR V 33 C 99].

#### *Agreement not coming under Act.*

[13] There is nothing to prevent parties to suit from agreeing, apart from Oaths Act, to abide by statement of third person. Parties referring disputes to nominee and agreeing to abide by his statement in Court on enquiry — Agreement is not to refer dispute to arbitration — Agreement and statement in Court by referee on oath after enquiry amount to adjustment — Parties cannot challenge it. 1937 All 701 (704) [AIR V 24] (DB).

[14] Offer and acceptance of special oath in proceedings before the Commissioner who is not the Court for the purposes of Oath Act does not form a binding contract between the parties which the Court is bound to enforce. 1957 Nag 47 (52) [AIR V 44 C 14] : ILR (1956) Nag 685 (DB).

[15] Parties can agree, apart from Oaths Act, to be bound down by statement of witness including one who is party to suit — Statement of such referee is admission of both parties and is conclusive against both and can operate as estoppel. 1933 All 861 (880, 881) [AIR V 20] : 56 All 39 (SB).

[See also 1959 All 382 (384) [AIR V 46 C 91] (DB).]

**2. Offer by "any party."** — [1] The offer under S. 9 by a party to be bound by the special oath to be made by the other party must be before the Court. 1957 Nag 47 (51) [AIR V 44 C 14] : 1 L R (1956) Nag 685 (DB).

[2] Offer that case should be decided in accordance with statement of witness, amounts to offer to be bound by his deposition. 1929 All 759 (759) [AIR V 16] (DB).

#### *Counsel.*

[3] The word 'party' in S. 9 includes a duly authorised agent. Counsel held had authority, on basis of vakalatnama to submit case to the test of oath of man supposed to be honest. (43) 1943 All L W 489 (490) \* 1953 All 312 (313) [AIR V 40 C 132] : ILR (1951) 1 All 540

**Section 9 — Note 2 (contd.)**

\*1923 All 65 (67) [AIR V 10]. (Vakalatnama gives sufficient authority to pleader to agree to make reference under S. 9) \* 1930 Cal 463 (465) [A I R V 17] (DB). (Parties cannot resile from offer by pleader acting under instructions.) \* 1940 Oudh 314 (316) [AIR V 27] : 15 Luck 686. (Specific authority to offer oath or power to compromise case generally is not necessary.)

**Authorised agent.**

[4] Duly authorised agent of party can make offer contemplated in S. 9. 1929 Oudh 56 (58) [AIR V 18] (DB) \* 1953 All 512 (513) [AIR V 40 C 132] : ILR (1951) 1 All 540.

Counsel is an authorised agent to make an offer under the Section.) \* 1916 All 165 (165) [AIR V 3] : 38 All 131 (DB) \* 1932 Lah 414 (415) [A I R V 19]. (Son held had power under power-of-attorney to bind father by offer.) \* 1931 Oudh 350 (350) [A I R V 18]. (Terms of Mukhtarnama held wide enough to include authority to make offer.)

**Guardian.**

[5] Offer of guardian on behalf of minor to abide by deposition given on special oath binds minor although given without leave of Court provided there is no fraud or gross negligence on guardian's part. 1930 Cal 463 (464) [A I R V 17] (DB) \* 1927 All 584 (584) [AIR V 14] : 49 All 542 (DB) \* 1959 All 93 (95) [A I R V 46 C 31] (DB) \* 1957 Orissa 226 (227) [A I R V 44 C 64] : ILR (1957) Cut 402.

**3. Withdrawal of offer. — Before acceptance.** — [1] *Per Gihla J.* — Principle that offer can be withdrawn before it is accepted is applicable to offer under Oaths Act. 1931 Cal 549 (550) [AIR V 18] (DB) \* 1957 Orissa 226 (227) [AIR V 44 C 64] : ILR (1957) Cut 402.

**After acceptance.**

[2] Where a party offers to be bound by the statement on oath of any of the opposite parties under S. 9 of the Act and the opposite party accepts the offer, there is a completed agreement which cannot be revoked and he cannot resile from such an offer unless there be sufficient cause to the satisfaction of the Court for allowing the offerer to resile. 1952 All 882 (889) [A I R V 39] : ILR (1953) 1 All 494 (FB) \* 1952 All 890 (891) [AIR V 39] : I L R (1954) 1 All 28 (FB) \* 1959 Punj 252 (253) [A I R V 46 C 80] (DB) \* 1957 Orissa 226 (227) [AIR V 44 C 64] : ILR (1957) Cut 402 \* 1955 N U C (Mad) 3163 [AIR V 42] \* 1953 Mys 55 (56) [A I R V 40 C 28] : I L R (1953) Mys 134. (Court has discretion to allow retraction on good grounds particularly when the opposite party is not prejudiced, but retraction cannot be allowed after the oath is administered.) \* 1952 Pat 208 (210) [AIR V 39] : 31 Pat 91 (DB) \* 1948 All 125 (127) [AIR V 35 C 56] : I L R (1947) All 54 (DB) \* 1946 Lah 78 (80) [AIR V 33 C 21] \* ('96) 18 All 46 (49) (DB) \* 1933 All 463 (464) [AIR V 20] : 55 All 298. (Oath need not have been taken.) \* 1927 All 590 (590) [AIR V 14] : 49 All 388. (Court has discretion to allow retraction on good grounds.) \* 1931 Cal 549 (550) [AIR V 18] (DB). (Party offering is bound

down by statement on special oath even after withdrawal of offer.) \* ('12) 16 Ind Cas 783 (784) (DB) (Cal) \* 1941 Lah 173 (175) [A I R V 28] \* 1926 Lah 240 (240) [A I R V 13]. (Court has discretion to allow retraction on good ground. But retraction cannot be allowed after the oath is administered.) \* ('36) 38 Pun L R 1171 (1172) \* ('22) 65 Ind Cas 700 (700) (DB) (Lah) \* 1938 Mad 385 (386) [A I R V 25] (DB) \* ('99) 22 Mad 234 (237) (DB). (Court has discretion not to administer oath if good grounds are shown.) \* ('07) 17 Mad L Jour 536 (537) (DB) \* ('10) 7 Mad L Tim 197 (198). (Another term of oath cannot be insisted upon once offer has been accepted.) \* 1937 Nag 212 (213) [AIR V 24]. (But Court may allow retraction on good grounds.) \* 1925 Oudh 104 (104) [A I R V 12] : 27 Oudh Cas 217. (No retraction on ground that particular statement of person does not dispose of suit.) \* 1946 Pat 272 (276) [AIR V 33 C 99].

[But see 1935 All 276 (277) [AIR V 22]. (Party can resile from agreement even without satisfactory reason, provided the resiling is before statement on oath is taken. Resiling terminates the agreement.)]

[3] Where a party offers to be bound by the statement of a witness, he cannot resile from such offer if any of the opposite parties has accepted that offer or has made a similar counter offer, unless there be sufficient cause to the satisfaction of the Court for allowing the offerer to resile, but he can resile from it if there has been no such acceptance or counter offer by any other party to the judicial proceeding. 1952 All 882 (889) [AIR V 39] : ILR (1953) 1 All 494 (FB).

[4] Defendant offering to be bound by plaintiff's oath — Offer accepted, but defendant himself making it impossible for plaintiff to take it — Parties are bound by original agreement of oath and if plaintiff takes oath suit should be decided accordingly. 1928 Mad 488 (488, 489) [AIR V 15].

[5] Where form of oath agreed to, itself involves participation of person who agrees to be bound by oath of other side and where failure to take oath is wholly attributable to act or omission of person who agreed to be bound by oath, the result in law is same as if oath had been taken. Where there was only one occasion on which oath was offered to be taken and non-taking of oath on that occasion was due to unexpected demand of fee by temple servant which neither side was prepared to meet at that time and when defendant offered subsequently to take oath paying the fees demanded by temple servant, plaintiff did not agree on ground that this was fresh offer and Court dismissed suit on ground that plaintiff had refused to allow oath to be taken — Held that the dismissal of the suit at this stage was not right — Held, further that proper course to be adopted was to issue commission at cost of defendant directing taking of oath as agreed upon on date to be fixed in presence of plaintiff. 1935 Mad 591 (592) [AIR V 22] \* 1953 Mad 396 (398) [AIR V 40 C 143].

## 10. Administration of oath if accepted.

If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

### Section 9 — Note 3 (contd.)

#### *Oath against decency and affecting third party.*

[6] Resiling from offer to abide by oath, even after its acceptance, does not affect the case, if the oath is repugnant to decency and affects a third party, such as an oath on *talak*. 1940 Pesh 26 (27) [AIR V 27] \* (10) 1910 Pun L R No. 114, p. 321 (322) : 1910 Pun Re No. 66 (DB).

#### *Cases outside Act.*

[7] Party is entitled to resile from offer on good grounds—Court can use its discretion — But oath or solemn affirmation must be in essence and nature different from oath and affirmation contemplated by S. 5 — Parties agreeing to constitute person as referee who is to make a simple statement on which case is to be decided—Statement not being on oath, parties can resile from original position, but before the statement is given without assigning satisfactory reasons. 1933 All 184 (185, 186) [AIR V 20].

[8] Parties agreeing that pleader be appointed referee and case decided in accordance with statement which he makes in Court without any oath being administered — Parties further agreeing to accept it and desiring not to produce evidence — Agreement is not adjustment — Oaths Act does not apply — Any party may resile from such agreement before statement is made by pleader and action taken on it. 1931 All 557 (558, 559) [AIR V 18] : 53 All 673 (DB).

#### *Procedure.*

[9] Even if party resiles from taking oaths in matters to be proved by oaths, it is not equivalent of its proof. No decree can be passed under circumstances against resiling party. Court then can proceed with suit in ordinary manner drawing inferences from defaulter's conduct and can impose appropriate costs. ('12) 1912 Mad W N 361 (361) (DB).

[10] Where the defendant desires that the plaintiff should be required to appear in Court to state whether or not he is prepared to make a certain statement on solemn affirmation and if he is prepared, to make the statement, the order of the Court dismissing the suit on the ground that the plaintiff has disobeyed its order requiring him to attend in person is without jurisdiction. 1950 Pat 180 (181) [AIR V 37 C 39].

[11] Party retracting— Court should either administer oath and decide on that or proceed according to law with appropriate inference from party's refusal. 1927 Lah 78 (78) [AIR V 14].

[12] Agreement to be bound by oath of other party is agreement to treat evidence given under oath as evidence in case and to dispense with other evidence. If after agreement, the party is prevented from taking oath,

the party so prevented is entitled to decree. Where it is the plaintiff who agrees to be bound by oath, and where it is he who prevents the oath being taken, his suit should be dismissed as one for want of evidence. ('07) 17 Mad L Jour 99 (100) (DB).

[13] Where in a suit on a promissory note, the plaintiff agreed to abide by the defendant's oath, but the agreement became abortive and the Court permitted the plaintiff to withdraw his offer, it was held that it was competent to the Court to decide the suit on the evidence already on record prior to the agreement. 1917 Mad 722 (722) [AIR V 4].

### Section 10 — Note 1

[1] Court has discretion to administer oath or not administer it even after offer has been accepted by the opposite party and when the trial Court has duly exercised that discretion, appellate Court should not interfere with it. ('36) 38 Pun L R 1171 (1172).

[See also 1952 All 882 (884) [AIR V 39], ILR (1953) 1 All 494 (FB).]

[2] Where a challenger who offers to be bound by an oath on condition precedent that he should perform certain act in the proceedings for administration of oath, fails or refuses to do the act as agreed, he must be deemed to have waived that condition and cannot insist upon it. The duty of administering the oath under the Act devolves on the Court and it cannot be said to be acting in excess of its powers if it orders the Commissioner to be appointed by it, to perform certain terms which the challenger refuses to execute in spite of his agreement. 1938 Mad 385 (387) [AIR V 25] (DB).

[3] Agreement to take oath must specify form of oath and place where it is to be administered. ('11) 21 Mad L Jour 618 (620).

[4] The plaintiff agreed to accept oath of defendant as conclusive of matter in issue. Agreement did not stipulate time of oath, which were left to be fixed by Court. On day appointed by Court parties appeared but parties agreed to abide by decision of *panchayatdars* but subsequently, they did not abide by decision — Held that on facts agreement to abide by decision of mediators did not cancel or supersede oath agreement. 1936 Mad 406 (407) [AIR V 23].

[5] Necessary procedure in administration of special oath and in preliminary stages not strictly followed—Oath is not binding. ('10) 7 Mad L Tim 286 (287) (DB).

[6] Agreement to abide by special oath of plaintiff if taken before six persons—Only five present — Defendant can take objection — No inference against defendant should be made. 1933 Lah 452 (453) [AIR V 20].

[7] Oath should be taken in presence of

**11. Evidence conclusive as against person offering to be bound.**

The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

**Section 10 — Note 1 (contd.)**

parties to be bound by it. ('12) 3 Low Bur 60 (61).

[8] Unless specially authorised, Vakil cannot agree to decision, on oath of opposite party in particular form. ('10) 20 Mad L Jour 386 (DB).

[9] Section 10 applies only after the party or the witness agrees to make the special oath or affirmation, when the Court is empowered to proceed to administer it. ('58) 1958-1 Andh W R 451 (453).

See also S. 9, Note 3.

[10] Sections 8, 9 and 10 do not entitle a party to withdraw from the offer of being bound by special oath after once the said offer has been accepted by the other side. 1952 Pat 208 (210) [AIR V 39] : 31 Pat 91\* 1946 Pat 272 (277) [AIR V 33 C 99].

[11] Sections 10 and 11 of the Oaths Act are applicable to proceedings under Ss. 144 and 145 of the Criminal Procedure Code but obviously they are not applicable to criminal proceedings which are between the Crown or Government and the accused unless these may be criminal proceedings between the complainant and the accused in certain circumstances. 1951 Pat 370 (371) [AIR V 38 C 91] : 28 Pat 441 (DB).

[12] Where the plaintiff makes no valid grounds for resiling from the agreement to take oath his refusal to take oath is arbitrary. 1959 Mys 21 (23) [AIR V 46 C 6] : ILR (1958) Mys 562.

[13] Even when the procedure of Ss. 9, 10 and 11 has been gone through, the Court is still required to pass a judgment. 1959 All 93 (95) [AIR V 46 C 31] (DB).

[14] Sections 8 to 11 do not apply to criminal proceedings. 1952 All 678 (679) [AIR V 39] : 1952 Cri L Jour 1183.

[15] A Commissioner appointed merely to record evidence and submit a report cannot act for the purposes of Ss. 8, 9 and 10 of the Oaths Act. 1957 Nag 47 (51) [AIR V 44 C 14] : ILR (1956) Nag 685 (DB).

**Section 11 — Note 1**

[1] The primary meaning of S. 11 is that the evidence given in any proceeding in which a challenge has been made and an oath has been taken shall be in that proceeding conclusive proof of the matter stated. It cannot automatically be evidence at all except in the proceedings in which it is actually being received. 1957 Him-Pra 35 (36) [AIR V 44 C 13] \* 1940 Mad 627 (627, 628) [AIR V 27]. (Evidence given in a proceeding under O. 21, R. 100, Civil P. C., cannot be a conclusive proof in any suit under O. 21, R. 103).

[2] Under S. 11 it is only if oath is taken that it is conclusive proof of matters stated—Declining afterwards or failure to take it is a circumstance to be taken in deciding case—Party should be given opportunity to adduce evidence. 1925 Mad 1264 (1265) [AIR V 12].

[3] Where parties to suit merely agree to

abide by statement of witness and the agreement does not refer to an oath in any special form, the Act does not apply and the party is not bound by the mere statement made by witness. 1933 All 184 (186) [AIR V 20].

[4] Person making statement on oath on being challenged to do so, is, though he is no party to suit, a witness though not so summoned and his oath has as much binding force as that of regular witness. ('11) 1911 Pun L R No. 245, p. 910 (912).

[5] Where a suit was dismissed by the trial Court and the appeal therefrom by the defendant was also dismissed on the basis of a special oath offered by the defendant and accepted by the respondent, *Held*, that the defendant could not but be bound by the oath of the respondent and whatever he stated was conclusive proof of the matter in controversy between them. 1959 Raj 127 (129) [AIR V 46 C 49] : ILR (1959) 9 Raj 632.

[6] Unless oath is taken in pursuance of agreement, case cannot be disposed of on basis of default either on behalf of challenger or by the acceptor. Provisions of S. 11, can only be attracted after oath had been taken in accordance with agreement arrived at between parties as mentioned in Ss. 9 and 10 of the Act. 1938 Mad 385 (386) [AIR V 25] (DB).

[7] Where the defendant offers to be bound by the statement on oath made by the plaintiff on a certain question and agrees that if the statement is made the suit may be decreed against him, and the statement is duly made by the plaintiff, there is no issue of law or fact to go into and the plaintiff is entitled to a decree as prayed for by him. ('51) 1951 Raj L W 52 (54) (DB) \* 1924 All 126 (127) [AIR V 11] : 45 All 724 \* 1919 Lah 138 (138) [AIR V 6] : 1919 Pun Re No. 118.

[8] Where the party agreeing to abide by oath of his opponent imposes fresh conditions at time of taking oath, the party taking oath has right to enforce agreement originally entered and if he takes oath according to original agreement evidence will be conclusive against other party. ('12) 12 Mad L Tim 613 (615) (DB).

[9] Once the defendant agrees to take special oath, the plaintiff cannot renege from the agreement and the statement made by the defendant is binding on the plaintiff, even if it was made after plaintiff's retraction. 1931 Cal 549 (550) [AIR V 18] (DB).

[10] For the application of S. 11 it is necessary that the statement of the referee should amount to 'evidence' of fact in controversy, between the parties. Where the statement is not an 'evidence' with reference to matters in dispute between the parties it cannot be accepted as conclusive evidence under the section. 1927 All 676 (677) [AIR V 14] (DB).

[11] Facts proved by special oath are conclusively proved and any further evidence that may be taken should be limited to matters not proved by oath. ('99) 22 Mad 234 (237) (DB).

**Section 11 — Note 1 (contd.).**

[12] Effect of oath taken under the Act is merely to furnish conclusive evidence on matter in issue and decision on oath is res judicata. (113) 36 Mad 287 (291) (DB).

[13] Decision by oath is conclusive only as against person who offered to be bound. 1923 Nag 180 (180) [AIR V 10] \* 1929 All 759 (759) [AIR V 16] (DB) \* 1924 Bom 511 (512) [AIR V 11] : 25 Cri L Jour 1287 (DB). (But does not prevent Court from attempting to establish that particular statement was false in fact and to the knowledge of maker.) \* 1926 All 577 (578) [AIR V 13] : 27 Cri L Jour 1021. (Fact that case was decided on oath of defendant is not sufficient ground for refusing defendant opportunity to prove to satisfaction of Court that claim had been brought on false document.) \* 1918 Lah 126 (127) [AIR V 5] : 1918 Pun Re No. 83 (DB). (It is not conclusive against others though present at the time.) \* 1925 Oudh 104 (104) [AIR V 12] : 27 Oudh Cas 217.

[14] Unless the party offers to be bound by a special oath, the statement cannot be conclusive evidence for the purpose of S. 11. 1928 Bom 285 (286) [AIR V 15] : 52 Bom 295 (DB).

[15] Unless the oath is taken as agreed to by the parties, there cannot be said to be any evidence on the basis of which the Court can proceed to dispose of the case one way or the other so that it is necessary that the agreement to take the oath must be put into operation before the Court can have any material before it to decide the case on the basis of the agreement. 1953 Mad 396 (398) [AIR V 40 C 143]. (If a party agreeing to take oath in the temple is unable to do so on account of the temple being closed he is entitled to a fresh opportunity.)

[16] The Court must consider whether the evidence of the person taking the oath completely disposes of the questions in controversy between the parties. (12) 16 Ind Cas 733 (734) (DB) (Cal).

[17] Where defendant agreed that if plaintiff's witness ate food from the plaintiff's mother who was alleged to have given birth to the plaintiff in an illegitimate way, suit should be decreed against him and further stated that if plaintiff would serve that food to witness he was willing that suit should be decreed and when both these things were done—*Held* that so far as legitimacy of plaintiff was concerned point had been conclusively settled. 1924 All 911 (912) [AIR V 11].

[18] Party proposing to abide by statement of opposite party not in the form of special oath referred to in S. 8—Case is not governed by S. 11—Agreement, apart from Act, is binding on party and he cannot renege from it. 1937 Oudh 67 (69) [AIR V 24] : 12 Luck 349 (DB) \* 1933 All 861 (880, 881) [AIR V 20] : 56 All 39 (SB). (Statement of such referee is admission of both parties and is conclusive against both and can operate as estoppel.)

[19] Where agreement was to take oath on particular day but oath was taken on later day, burden lies on person who relies on oath

to show that time was not essence of contract. 1919 Mad 615 (616) [AIR V 6] (DB).

[20] Where defendant denies plaintiff's claim after taking water of Ganges in his hand as challenged by plaintiff, plaintiff's suit must be dismissed. (109) 31 All 315 (317) (DB).

[21] Plaintiff undertaking to abide by statement of particular person—Person examined on solemn affirmation—Person denying knowledge of case—Proceedings amount to compromise—Referee not having supported plaintiff's case, suit should be dismissed. 1927 Lah 99 (100) [AIR V 14].

[22] Suit for demolition of wall—Plaintiff and two out of three defendants agreeing to be bound by statement of defendant 1—Defendant 1 stating that wall could not be demolished by plaintiff—Defendant 3 not party to agreement—Plaintiff's suit dismissed as no decree against defendant 3 alone could be passed. 1931 Oudh 350 (351) [AIR V 18].

[23] The proceedings under S. 11 do not amount to an agreement or a compromise within the meaning of O. 23, R. 3 of Civil P. C. 1959 All 93 (94) [AIR V 46 C 31] (DB) \* 1953 Mld 396 (398) [AIR V 40 C 143] \* 1946 Lah 78 (79, 80) [AIR V 33 C 21].

[24] Decree passed on special oath is not a consent decree and is appealable—Remedy of the aggrieved party is not by way of a separate suit. 1938 Nag 64 (65) [AIR V 25] : ILR (1940) Nag 310.

[25] Minor is bound by offer made by guardian to abide by special oath of plaintiff even when offer is without leave of Court if there is no fraud or negligence—Offer stands on different footing from agreement or compromise contemplated by O. 32, R. 7, Civil P. C. 1930 Cal 463 (464) [AIR V 17] (DB) \* 1957 Orissa 226 (228) [AIR V 44 C 64] : ILR (1957) Cut 402.

[26] Suit by karta of joint Hindu family—Offer by karta to be bound by statement of defendant on special oath—Suit dismissed on statement of defendant on oath—Minor members present on occasions of oath but raising no objection—Minor members are bound by offer of karta and cannot renege from that position. 1946 Pat 272 (276) [AIR V 33 C 99].

[27] Guardian-ad-litem of minor defendant in pre-emption suit agreed that on plaintiff's taking oath that he had refused to take property in suit before execution of sale-deed, his suit should be decreed and plaintiff took such oath—*Held* minor defendant was bound so far as plaintiff's statement that he had not refused to purchase property was concerned, but agreement that suit should be decreed was not binding inasmuch as it amounted to compromise of suit which cannot be made without leave of Court. 1922 All 160 (161) [AIR V 9] : 44 All 117 (DB).

[28] Where a Hindu father is acting not only in his own interest but also in the interest of all his sons and for their benefit he can bind both his major as well as minor sons by special oath, unless it is proved that he was guilty of fraud or collusion. Assent of the major sons to the representative character need not be express; it may be implied. Consequently, a



**12. Procedure in case of refusal to make oath.**

If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

**V.—MISCELLANEOUS****13. Proceedings and evidence not invalidated by omission of oath or irregularity.**

No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render

**Section 11 — Note 1 (contd.)**

decree passed in such a suit against the father on special oath will be binding as *res judicata*, under S. 11, Expl. 6, Civil P. C., on his sons. 1938 Bom 465 (466, 467) [AIR V 25].

[29] Provisions of the section are not applicable in a criminal prosecution where one of the parties is the State, but proceedings under S. 145 Criminal P. C. being between private parties the provisions are applicable in those proceedings. 1952 All 678 (679, 680) [AIR V 39]; 1952 Cri L Jour 1183 + 1951 Pat 370 (371) [AIR V 38 C 91]; 28 Pat 441 (DB).

**Section 12 — Note 1**

[1] Legislature did not intend to extend provision of S. 12 to refusal of challenger to do certain act in compliance with form of oath stated in agreement. 1938 Mad 385 (387) [AIR V 25] (DB).

[2] Mere fact that person refuses to make special oath is not by itself sufficient to entitle Court to presume that his case is necessarily false. 1926 Cal 817 (818) [AIR V 13] (DB) + 1955 N U C (Mad) 3211 [AIR V 42] + 1946 Lah 78 (80) [AIR V 33 C 21]. (This refusal may, however, be taken into consideration and due weight given while appreciating the evidence.) \*1916 Lah 262 (264) [AIR V 3] + (198) 31 Mad 1 (4) (DB). (Per Miller J.—Obiter—If as result of refusal other party has lost evidence Court may be justified in refusing to allow former to adduce evidence.)

[3] Court does not act irregularly or illegally in taking into consideration plaintiff's refusal to take oath, defendant agreeing to be bound by it. But no weight should be attached to plaintiff's refusal when defendant also refuses. (11) 17 Nag L R 50 (52) + (135) 1935 Mad W N 370 (372).

[4] Though refusal to take special oath is conduct which Court is entitled to take into consideration, yet it would not outweigh positive evidence which has been adduced. 1933 Nag 52 (53) [AIR V 20].

[5] When both the parties agree to treat the evidence given under the oath as the evidence in the case and dispense with the other evidence and the plaintiff resiles from the agreement and refuses to take the oath, then there is no other evidence on record and the opposite side is entitled to a decree on the offer embodied in the agreement itself. 1955 N U C (Mad) 3163 [AIR V 42].

[6] Section 12 of the Oaths Act deals with procedure to be adopted in case of refusal to take oath. That section contemplates only the recording of the said fact. The law does not authorise the Court to pass a decree merely because a party has resiled from his original agreement to abide by the result of the oath. Such a party has the liberty to demand an adjudication of the question involved in the suit on merits. 1957 Trav Co 315 (316) [AIR V 44 C 129].

[7] Where the defendant desires that the plaintiff should be required to appear in Court to state whether or not he is prepared to make a certain statement on solemn affirmation and if he is prepared to make the statement, the order of the Court dismissing the suit on the ground that the plaintiff has disobeyed its order requiring him to attend in person is without jurisdiction, or at all events, the Court acts with material irregularity. 1950 Pat 180 (181) [AIR V 37 C 39].

[8] Under the very scheme of the Act it was not necessary to make any provision for an opportunity being given to the proposer or the challenger to resile from the agreement because once the proposal is made under S. 8 and is accepted by the acceptor under S. 9, it becomes a completed contract and as such becomes irrevocable. 1957 Orissa 226 (227) [AIR V 44 C 64]; ILR (1957) Cut 402.

[9] The proposer can resile from the agreement before it is actually accepted, if he can show sufficient cause. 1957 Orissa 226 (227) [AIR V 44 C 64]; ILR (1957) Cut 402.

[10] Agreement to take special oath — Issue of commission to administer oath — Plaintiff failing to take oath and subsequently applying for attaching condition precedent for taking special oath. *Held* that the plaintiff not having made out any valid grounds for resiling from the agreement his refusal to take oath was arbitrary. 1959 Mys 21 (25) [AIR V 46 C 6]; ILR (1958) Mys 562.

[11] Unless there be sufficient reasons for the refusal to take the oath after one has agreed to take, it raises a presumption against him and in favour of the truth of the case of the other side. 1952 All 582 (585) [AIR V 39]; ILR (1953) 1 All 494 (FB).

**Section 13 — Note 1**

[1] Section 13 enforces form of oath but does not cure the absence of authority in the Officer

inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

#### 14. Persons giving evidence bound to state the truth.

Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.<sup>a</sup>

[a] Cf. the Indian Penal Code (Act XLV of 1860), S. 191.

#### Section 13 — Note 1 (contd.)

administering it. 1929 Bom 136 (136) [A I R V 16] : 30 Cri L Jour 593 (DB).

[2] In case in which no oath is administered and officer before whom statement is made does not purport to be acting as officer authorised to administer oath, statement does not amount to affidavit. ('10) 4 Sind L R 88 (92).

[3] Word "witness" in concluding portion of S. 13 includes interpreter and juror; therefore, when interpreter omits to take oath, it must be proved that interpretation was made accurately. ('09) 10 Cri L Jour 150 (155) : 36 Cal 808 (DB) \* ('73) 23 Suth W R (Cr) 19 (20) (DB) (*Quære* : Applicability of section to cases of Jury).

[4] The omission to take any oath or any other irregularity in the form in which it is administered does not invalidate the proceedings. ('74) 21 Suth W R (Cr) 31 (32) (DB) \* 1915 Cal 105 (106) [AIR V 2] : 16 Cri L Jour 151. (It is irregularity curable under S. 13.) \* 1921 Pat 109 (112) [A I R V 8] : 6 Pat L Jour 147 : 22 Cri L Jour 417 (DB).

[5] Where a defendant does not agree to incur expenditure towards administering oath in a mosque, there is justifiable cause for him to withdraw even if the defendant backs out of the agreement without just cause, the suit cannot be decreed on such default. ('58) 1958 Ker L T 704 (705).

[6] Under S. 13 an omission to administer oath does not make the evidence inadmissible. Therefore the statements of the depositors, which were not recorded on oath would be admissible in evidence and can be acted upon in holding the sum kept as deposits to be the income of the assessee. 1960 Assam 187 (189) [AIR V 47 C 45] (DB).

[7] Where in a case under S. 376, Penal Code, the trial Court received the testimony of the minor prosecutrix after satisfying itself that she possessed sufficient understanding. *Held*, that her unsworn testimony was admissible. 1960 Madh-Pra 59 (60) [A I R V 47 C 28] : 1960 Cri L Jour 237.

[8] A witness may be a competent witness and yet he may not be in a position to understand the sanctity of oath. In such a case, S. 13 of the Oaths Act comes into play. A witness of this type can be examined without an oath and his testimony is as good as that of a witness to whom oath has been administered. 1952 Bhopal 25 (26) [AIR V 39] : 1952 Cri L Jour 1366.

[9] A Judge who recorded the statement of a girl of seven or eight years certified that she did not understand the sanctity of an oath and accordingly he did not administer one to her. He however, did not certify that

the child understood the duty of speaking the truth. The question was whether this omission rendered her evidence inadmissible — *Held* that the irregularity in question could not affect the admissibility of the girl's evidence. 1952 S C 54 (56) [A I R V 39] : 1952 S C R 377 : 1952 Cri L Jour 547.

[10] An omission to administer oath, even to an adult, goes only to the credibility of the witness and not his competency. 1952 S C 54 (55) [A I R V 39] : 1952 S C R 377 : 1952 Cri L Jour 547.

#### *Deliberate omission.*

[11] Section is unqualified in terms and applies even when omission to administer oath is deliberate—Court can receive evidence of a child, who does not understand nature of oath and to whom therefore oath has not been administered. 1946 P C 3 (5) [AIR V 33 C 2]. (This was the law even before amendments of 1936—Necessity of speaking truth is, however, not dispensed with : 10 All 207, *Overruled*.) \* 1918 Bom 212 (213) [AIR V 5] : 19 Cri L Jour 593 (DB). (But evidence of child though admissible should be received with caution—Court should satisfy itself that it is capable of understanding questions put to it.) \* 1920 Cal 414 (416) [A I R V 7] : 21 Cri L Jour 817 (DB) \* 1923 Lah 332 (333) [AIR V 10] : 25 Cri L Jour 317. (Court should only examine child of tender years as witness, after it has satisfied itself that child sufficiently understands what it has seen and afterwards inform Court thereof.) \* 1938 Mad 490 (491) [AIR V 25] : 39 Cri L Jour 585 (DB). (Unsworn testimony of young child.) \* 1942 Oudh 193 (196) [A I R V 29] : 17 Luck 376 : 43 Cri L Jour 243 (DB). (Evidence of boy of 10 years.) \* 1921 Pat 109 (112) [A I R V 8] : 6 Pat L Jour 147 : 22 Cri L Jour 417 (DB) \* 1939 Rang 402 (403) [A I R V 26] : 1940 Rang L R 104 : 41 Cri L Jour 129 (DB). (But it is for Court to decide what weight may be given to such unsworn testimony, and evidence of child must always be received with great caution.)

[But see 1935 All 579 (584, 585) [A I R V 22] : 58 All 23 : 36 Cri L Jour 1013 (DB) \* 1918 Low Bur 22 (24) [AIR V 5] : 9 Low Bur 88 : 19 Cri L Jour 54 (DB) \* ('04) 2 Low Bur 322 (323).]

[12] Section 13 is quite unqualified in its terms and there is nothing in it to suggest that it is to apply where the omission to administer the oath to a witness occurs per incuriam. 1960 Madh-Pra 59 (59, 60) [AIR V 47 C 28] : 1960 Cri L Jour 237.

#### Section 14 — Note 1

[1] There is presumption under S. 114 illus. (e) that statement in deposition was on



**15.** Amendment of Penal Code, sections 178 and 181. [*Repealed by the Repealing Act, 1938 (I of 1938), S. 2 and Sch.*]

**16.** Official Oaths abolished. [*Repealed by the Indian Oaths (Amendment) Act, 1955 (XVI of 1955), S. 2 [15.5.1955].*]

**SCHEDULE.**—[*Repealed by the Repealing Act, 1873 (XII of 1873).*]

## [THE] OBSTRUCTIONS IN FAIRWAYS ACT, 1881

(ACT XVI of 1881)

[The Act printed here is as on 1-10-1960]

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12. Saving of other powers possessed by Central Government.
13. Application to fairways in inland waterways.

### STATEMENT OF OBJECTS AND REASONS

"The object of this Bill is to empower the Government to remove obstructions to navigation which may exist in fairways situate in seas adjacent to British India, and to prohibit the creation of such obstructions for the future. The advantages of having such a law have been impressed upon the Government by certain recent cases. In one of these a question has been raised as to the power of the Government to remove the fishing stakes which are annually placed during the fine season in the sea off the port of Bombay, and which, having recently been advanced into the approach to the harbour, are now a source of serious danger to vessels frequenting that port. In another case which related to the deposit of ballast by shipmasters, at the mouth of the Rangoon river, a practice which, if

permitted, might cause serious impediment and danger to the navigation of the approaches to the port of Rangoon, the need for some further preventive powers than those which Government now possesses, has been made apparent.

There can be no doubt that it is extremely desirable that the powers of Government officers, and the procedure to be followed by them, in relation to matters of this nature, should be clearly defined, and as the Indian Statute-Book, as it now stands, does not deal adequately with the subject, the present Bill has been prepared. A precedent for such legislation will be found in the Imperial Statute 40 & 41 Vic., c. 16 (the Removal of Wrecks Act, 1877). The Bill, while following generally the lines of the statute, goes beyond

#### Section 14 — Note 1 (*contd.*)

affirmation—Even otherwise S. 14 of the Act requires witness to state the truth—When therefore witness makes statement known to him to be false, he commits offence under Penal Code, S. 191. ('39) 1939 Nag L Jour 396 (396).

[2] A petitioner who files an application for transfer under S. 24, Civil P. C., is bound by express provisions of law to state the truth under S. 14. 1955 NUC (Cal) 2908 [AIR V 42].

[3] Whenever a man makes a statement in

Court on oath he is bound to state the truth and if he does not, he makes himself liable under the provisions of S. 193, I. P. C. It is no defence to say that he was not bound to enter the witness box. Indeed the very sanctity of the oath requires that a person put on oath must speak the truth. 1959 S C 843 (846) [AIR V 46 C 115] : 1 L R (1959) Punj 1709 : 1959 Cri L Jour 1124 \* (55) 1955 All L Jour 155 (156).

it in two material respects. The power to remove obstructions conferred by it is not confined, as in the statute, to the case of obstructions caused by wrecks, but extends also to fishing stakes, ballast and any other thing which may form an obstruction or danger to navigation. The other point in which the Bill goes beyond the statute is that, in addition to giving power to remove existing obstructions, it enables the Government to prevent the

wilful creation of obstructions in the future. With this object the Governor-General in Council is empowered (section 7) to make rules to regulate or prohibit in any fairway the placing of fishing stakes, the casting of ballast, or the doing of any other act which will, in his opinion, cause or be likely to cause danger or obstruction to navigation."

—Gazette of India, 1881, Part V, page 3.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by A. O. 1937; A. L. O. 1950; 2 A. L. O. 1956.

—Repealed in part by Act X of 1914.

### [THE] OBSTRUCTIONS IN FAIRWAYS ACT, 1881

(ACT XVI OF 1881)<sup>a</sup>

[15th March, 1881.]

*An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.*

#### Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in <sup>a</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States] and to prevent the creation of such obstructions : It is hereby enacted as follows :—

[a] *Substituted* for "a Part A State or a Part C State" by 2 A. L. O., 1956. Immediately before the 1st November 1956 the following were Part A States : Andhra, Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal. And the following were Part C States : Ajmer, Bhopal, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh.

#### 1. Short title.

This Act may be called THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881.  
<sup>a</sup>[\* \* \*]

But nothing herein contained shall apply to vessels <sup>b</sup>[belonging to, or hired by a contract made on behalf of, the <sup>A</sup>[Government]].

[a] The words "and it shall come into force at once" were *omitted* by the Repealing and Amending Act, 1914 (X of 1914), S. 3 and Sch. II. [b] *Substituted* for "belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council", by A. O., 1937 [1-4-1937].

#### 2. Central Government empowered to remove or destroy obstruction in fairway.

Whenever, in any fairway leading to any port in <sup>a</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States], any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, <sup>b</sup>[the Central Government] may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(a) cause such thing or any part thereof to be removed ; or

(b) if such thing is of such a description or so situate that, <sup>c</sup>[in the opinion of the Central Government], it is not worth removing, cause the same or any part thereof to be destroyed.

[a] *Substituted* for "a Part A State and a Part C State", by 2 A. L. O., 1956 [1-11-1956]. [b] *Substituted* for "the Local Government of the part of British India in which such port is situate", by A. O., 1937 [1-4-1937]. [c] *Substituted* for "in the opinion of the Local Government", *ibid*.

### 3. Central Government entitled to expenses incurred in removing obstruction.

Whenever anything is removed under section 2, <sup>a</sup>[the Central Government] shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

#### Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

[a] *Substituted* for "the Government", by A.O., 1937 [1-4-1937].

### 4. Notice of removal to be given by Central Government.

The <sup>a</sup>[Central Government] shall, whenever anything is removed under section 2, publish in the <sup>a</sup>[Official Gazette] a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

[a] *Substituted* for "Local Government", by A. O., 1937 [1-4-1937].

### 5. Things removed may, in certain cases, be sold.

If after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the <sup>a</sup>[Central Government] in respect thereof,

the <sup>a</sup>[Central Government] may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

[a] *Substituted* for "Local Government", by A.O., 1937 [1-4-1937].

### 6. Proceeds how applied.

On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same :

Provided that he makes the claim within one year from the date of the sale.

### 7. "Vessel" to include tackle, cargo, etc.

For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

### 8. Power to make rules to regulate and prohibit the placing of obstructions in fairways.

The <sup>a</sup>[Central Government] may, from time to time, by notification in the <sup>a</sup>[Official Gazette], make rules to regulate or prohibit, in any fairway leading to a port in <sup>a</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States] the placing of fishing stakes,

#### Section 3 — Note 1

[1] The accused was ordered by the Superintendent of the coast guard to remove certain fishing stakes and on his failing to comply with the order was convicted under S. 283, I. P. C. and sentenced to pay a fine of Rs. 20. Out of the fine Rs. 15 were ordered to be paid

to the complainant coast guard to cover the expenses of removing the stakes under S. 545 of Cr. P. C. — *Held* that the case not having been dealt with under The Obstructions In Fairways Act, the order of compensation was illegal. (188) 1886 Rat 241 (242).

the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in <sup>b</sup>[its] opinion, cause, or be likely to cause, obstruction or danger to navigation.

[a] *Substituted* for "a Part A State or a Part C State" by 2 A. L. O., 1956 [1-11-1956]. For the names of Part A and Part C States *see* foot-note 'a' under Preamble. [b] *Substituted* for "his", by A. O., 1937 [1-4-1937].

## 9. Penalty for breach of such rules.

Whoever is guilty of any act or omission in contravention of the rules made under section 8, may be tried for such offence in any district or presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

## 10. Compensation payable in certain cases for damage caused under this Act.

Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the <sup>a</sup>[Central Government] reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes<sup>b</sup> and not otherwise ; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

[a] *Substituted* for "Secretary of State for India in Council", by A. O., 1937 [1-4-1937].

[b] *See* the Land Acquisition Act, 1894 (I of 1894).

## 11. Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

Whenever any obstruction in a fairway leading to a port in <sup>a</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States] has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the <sup>a</sup>[Central Government] or a <sup>a</sup>[State Government], previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

[a] *Substituted* for "a Part A State or a Part C State", by 2 A. L. O., 1956 [1-11-1956]. For the names of Part A and Part C States *see* foot-note 'a' under Preamble.

## 12. Saving of other powers possessed by Central Government.

Nothing herein contained shall be deemed to prevent the exercise by <sup>a</sup>[the Central Government] of any other powers possessed by it in this behalf.

[a] *Substituted* for "the Government", by A. O., 1937 [1-4-1937].

## \*[13. Application to fairways in inland waterways.

All references in this Act to the Central Government shall, in relation to fairways in inland waterways, be construed as references to <sup>b</sup>[State Government] ].

[a] *Inserted* by A. O., 1937 [1-4-1937]. [b] *Substituted* for "the Government of a Part A State or a Part C State", by 2 A. L. O., 1956 [1-11-1956].

# [THE INDIAN] OFFICIAL SECRETS ACT, 1923

(ACT XIX OF 1923)

[The Act printed here is as on 1-10-1960]

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16. [*Repealed.*]

### STATEMENT OF OBJECTS AND REASONS

"The position in regard to the protection of official secrets in India is briefly as follows. The provisions of the law which are now in force are: (a) An Act of the Legislature in India — the Indian Official Secrets Act, 1889, as amended by the Indian Official Secrets (Amendment) Act, 1904; and (b) A Statute of Parliament, — the Official Secrets Act, 1911, (1 & 2 George V, C. 28). The provisions of the British Statute have, as a result of experience gained during the War, been considerably modified by the enactment of the Official Secrets Act, 1920 (10 & 11 Geo. V, C. 75), but the latter Statute does not apply to British India.

It has for some time past been recognised that it is unsatisfactory to have two separate laws in force simultaneously in India. Further, although the British Act of 1911 is in force in India, difficulties arise in applying it because of the use in it of English common law terms and so on. For these reasons it is desirable that there should be a single consolidated Act applicable to Indian conditions, and the desirability of this has been emphasised by the passing of the British Act of 1920 which has considerably amended the Act of 1911, but is not applicable to India.

The provisions of the British Act of 1911 are more effective, particularly in the matter of the protection of military secrets than the Indian enactments, and they have been further strengthened by the enactment of the amending Statute of 1920, which is based on experience gained during the War. It is considered desirable, therefore, that the law in India should be assimilated to that in force in the United Kingdom, and the object of this Bill is to consolidate the provisions of the British Acts of 1911 and 1920 and to enact them in a form suitable for India.

As this Bill is a purely consolidating measure, it is not necessary to deal with the clauses in detail, but it may be mentioned that it is proposed to omit provisions on the lines of sections 4 and 5 of the Act of 1920, as it is considered that the matters dealt with in these sections are sufficiently covered by the provisions of the Indian Telegraph Act, 1885, and the Indian Post Office Act, 1898.

If this Bill is passed it will not be necessary to retain the Indian Acts, and provision is therefore made in clause 15 for their repeal."

—Gazette of India, 1922, Part V, page 210.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Act III of 1951.
- Amended temporarily by Act XXXV of 1939.
- Amended in Bombay by Bom. Act XXIII of 1951.
- Adapted by A. O., 1937; A. C. A. O., 1948; A. L. O., 1950.
- Extended by Acts LIX of 1949; XXX of 1950.
- Extended in Bombay by Bom. Act IV of 1950.
- Extended in Madhya Pradesh by M. P. Act XII of 1950.
- Repealed in part by Act XII of 1927.

## [THE INDIAN] OFFICIAL SECRETS ACT, 1923

(ACT XIX OF 1923)<sup>a</sup>

[2nd April, 1923.]

*An Act to consolidate and amend the law <sup>b</sup>[\* \* \*] relating to official secrets.*

•[\* \* \* \* \*]

WHEREAS it is expedient that the law relating to official secrets <sup>b</sup>[• • •] should be consolidated and amended;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1922, Pt. V, p. 210; and for Report of Select Committee see, *ibid*, 1923 Pt. V, p. 61. [b] The words "in the Provinces" were omitted by A. L. O., 1950 [26-1-1950]. [c] First two paragraphs of the preamble were omitted, *ibid*.

## 1. Short title, extent and application.

(1) This Act may be called THE INDIAN OFFICIAL SECRETS ACT, 1923.

<sup>a</sup>[(2) It extends to the whole of India and applies also to servants of the Government and to citizens of India outside India.]

[a] Substituted for the former sub-section (2) by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

## 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

(1) any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested in Government;

•[\* \* \* \* \*]

[a] Clause (1a) which was inserted by A. O. 1937, was omitted by A. C. A. O., 1948 [23-3-1948].

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

(3) "document" includes part of a document;

(4) "model" includes design, pattern and specimen;

(5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunitions, torpedo, or mine intended or adopted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

(6) "Office under <sup>A</sup>[Government]" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession;

(7) "photograph" includes an undeveloped film or plate;

(8) "prohibited place" means—

(a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, <sup>A</sup>[Government], any military telegraph or telephone so belonging or occupied, any wireless or

signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

(b) any place not belonging to <sup>a</sup>[Government] where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, <sup>a</sup>[Government], or otherwise on behalf of <sup>a</sup>[Government];

(c) any place belonging to or used for the purpose of <sup>a</sup>[Government] which is for the time being declared by the <sup>a</sup>[Central Government], by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of <sup>a</sup>[Government], which is for the time being declared by the <sup>a</sup>[Central Government], by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

[a] Substituted for "Governor-General in Council" by A. O., 1937 [1-4-1937].

### OBJECTS AND REASONS

"Clause 2 (8)—The definition of 'prohibited place' has been restricted with a view to applying it, in respect of telegraphs and telephones, only to military telegraphs and telephones and in respect of factories and dockyards only to those factories and dockyards which besides belonging to or being occupied by or on behalf of Government are also used

for any of the purposes mentioned in the last part of the definition.

In the interests of the public we have provided that a place notified under (c) or (d) as a prohibited place until a copy of the notification in English and in the vernacular of the locality is affixed thereto."

—S. C. R.

(9) "sketch" includes any photograph or other mode of representing any place or thing; and

<sup>a</sup>[\* \* \* \* \*]

[a] Sub-section (9A) which was inserted by A. L. O., 1950 was omitted by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

(10) "Superintendent of Police" includes any police-officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the <sup>a</sup>[Central Government] <sup>b</sup>[\* \* \*].

[a] Substituted for "Governor General in Council" by A. O., 1937 [1-4-1937]. [b] The words "or by any Local Government" were omitted by A. O. 1937 [1-4-1937].

### 3. Penalties for spying.

(1) If any person for any purpose prejudicial to the safety or interests of the State—

- (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or
- (c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of <sup>A</sup>[Government] or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

#### OBJECTS AND REASONS

Sub-section (1) — "Offences under this section cover a very wide field and many of them even in their most aggravated form would not merit the maximum penalty provided by the clause. We have therefore introduced two separate maxima, retaining the maximum of fourteen years for the graver offences specified by us and introducing a maximum of three years for other offences under the section. The line of distinction, which we have laid down, is approximately the line between what we may call civil secrets on the one hand and secrets of defence on the other. For the same reason we have removed the minimum penalty of three years altogether."

Sub-section (2) — "We have limited the application of the provisions of the first part of this sub-clause, which facilitates proof of a purpose prejudicial to the safety or interests of the State, to prosecutions for the graver class of offences for which we have retained the maximum penalty of fourteen years under sub-clause (1); and in respect of those offences for which a special presumption was introduced in the second part of this sub-clause, we have limited the operation of that presumption by providing that it shall not be raised by the mere fact of the accused having improperly made, obtained, etc., a document of the nature covered by the sub-clause."

—S. C. R.

#### Section 3 — Note 1

[1] The disclosure of Government Departmental examination papers constitutes an offence under Official Secrets Act. ('02) 1 Low Bur Rul 133 (134, 135).

[2] Offences under S. 3 in certain cases are punishable with fourteen years' imprisonment and in other cases with three years' imprison-

ment and S. 12 of this Act makes the offences under S. 3 which are punishable with imprisonment of 14 years non-bailable. Therefore, it should be proved that the offence of which the accused is suspected is bailable or non-bailable. 1958 Tripura 34 (35) [AIR V 45 C 14] : 1958 Cri L Jour 1248.



#### 4. Communications with foreign agents to be evidence of commission of certain offences.

(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without \* [India], shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provisions,—

(a) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without \* [India], visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without \* [India], the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;

(b) the expression “foreign agent” includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without \* [India], prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without \* [India], committed, or attempted to commit, such an act in the interests of a foreign power;

(c) any address, whether within or without \* [India] in respect, of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

[a] Substituted for “the States”, by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

#### 5. Wrongful communication, etc., of information.

<sup>a</sup>(1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information

##### Section 5 — Note 1

[1] Section 5 (1) of the Official Secrets Act is very comprehensive in its nature. It applies not merely to Government servants, but also to all persons who have obtained the secret in contravention of the Act. Reading S. 5 (4) of the Act and S. 4 (1) (f) of the Press (Emergency Powers) Act together, an invitation to the public, contained in an article or advertisement in a newspaper, to send official secrets to the editor of a newspaper for payment comes within S. 4 (f) of the Press Act as well as S. 5 (1) of the Official Secrets Act. It is really an invitation encouraging and inciting any person to commit an offence. 1946 Bom 322 (324) [AIR V 33 C 68] : I L R (1946)

Bom 454 : 47 Cri L J 744 (SB) + ('60) I L R (1960) Ker 1085 (1089).

[2] The expression ‘official secret’ is ordinarily understood in the sense in which it is used in the Official Secrets Act and has reference to secrets of one or the other department of the Government or the State. 1946 Bom 322 (324) [AIR V 33 C 68] : I L R (1946) Bom 454 : 47 Cri L Jour 744 (SB).

[3] Budget papers are official secrets which cannot be published until the budget is actually presented in the Legislature and the contravention of the same would amount to an offence under the Act. ('60) I L R (1960) Ker 1085 (1091) (DB).

which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under <sup>A</sup>[Government], or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under <sup>A</sup>[Government], or as a person who holds or has held a contract made on behalf of <sup>A</sup>[Government], or as a person who is or has been employed under a person who holds or has held such an office or contract —

- (a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it ; or
- (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State ; or
- (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof ; or
- (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information ;

he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

<sup>a</sup>(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

[a] Sub-sections (1) and (4) were amended temporarily during the continuance of War by the Defence of India Act, 1939 (XXXV of 1939), S. 6. These amendments lapsed on 30-9-1946.

#### OBJECTS AND REASONS

*Sub-section (1).* — “In (a) we have inserted the word ‘wilfully’ as we do not think that negligent communication should be punishable except to the extent to which it is punishable under (d). We have made a similar

insertion in (c) for the same purpose. We have also inserted the words “or in a Court of Justice” in order to protect public officers who have used their discretion under section 124 of the Indian Evidence Act.” — S. C. R.

#### 6. Unauthorised use of uniforms ; falsification of reports, forgery, personation, and false documents.

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

- (a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform ; or

- (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission ; or
  - (c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document ; or
  - (d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under <sup>A</sup>[Government], or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement ; or
  - (e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of <sup>A</sup>[Government], or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp ;
- he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

- (a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof ; or
  - (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police-officer ; or
  - (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid ;
- he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs or <sup>A</sup>[Government], or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

#### OBJECTS AND REASONS

*Sub-section (1).*—“We consider that the ordinary penal law provides a sufficient penalty for most, if not for all, of the offences created

by this clause, and we accordingly think that the penalty provided by this clause should only be enforceable where the safety

of the State is affected. We have therefore struck out the words 'or interest' in sub-clauses (1), (2) and (4)."

*Sub-section (2).* — "We consider that in respect of all the offences created by sub-clause (2) it should be necessary for the prosecution to prove that the acts complained of were done for a purpose prejudicial to the safety of the State. For the insertion of the word "wilfully" compare note on clause 5 (1)."

*Sub-section (4).* — "The redrafting of this sub-clause is mainly consequential on the changes made in sub-clauses (1) and (2) of this clause, but we have thought it right following the principle which we laid down when considering clause 3 to restrict the operation of this sub-clause, which facilitates the proof of a purpose prejudicial to the safety of the State, to prosecutions for the graver offences under this clause."

—S.C.R.

## **7. Interfering with officers of the police or members of the Armed Forces of the Union.**

(1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police-officer, or any member of \* [the Armed Forces of the Union] engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

[a] *Substituted* for "His Majesty's forces", by A. L. O., 1950 [26-1-1950].

## **8. Duty of giving information as to commission of offences.**

(1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police-officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of \* [the Armed Forces of the Union] engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

[a] *Substituted* for "His Majesty's forces", by A. L. O., 1950 [26-1-1950].

## **9. Attempts, incitements, etc.**

Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

## **10. Penalty for harbouring spies.**

(1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police-officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

**11. Search-warrants.**

(1) If a Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police-officer named therein, not being below the rank of an officer in charge of a police-station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police-officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police-officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police-officer under sub-section (2) he shall, as soon as may be, report such action, in a presidency-town to the Chief Presidency Magistrate, and outside such town to the District or Sub-divisional Magistrate.

**12. Power to arrest.**

Notwithstanding anything in the Code of Criminal Procedure, 1898, —

- (a) an offence punishable under section 3 or under section 3 read with section 9 with imprisonment for a term which may extend to fourteen years shall be a cognizable and non-bailable offence ;
- (b) an offence under clause (a) of sub-section (1) of section 6 shall be a cognizable and bailable offence ; and
- (c) every other offence under this Act shall be a non-cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance.

**13. Restriction on trial of offences.**

(1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the \*[appropriate Government]) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the \*[appropriate

**Section 12 — Note 1**

[1] Section 12 makes only the offences under S. 3 or attempts for the same which are punishable with imprisonment for 14 years non-bailable, while the other offences under the Act are bailable. 1958 Tripura 34 (35) [AIR V 45 C 14] : 1958 Cri L Jour 1248.

**Section 13 — Note 1**

[1] Section 13 (2) indicates that the case is not to be sent to the Sessions Court as a mat-

ter of course. The Magistrate has to see whether there is a prima facie case before the accused is to be committed to Sessions. If there is no prima facie case, the accused has to be discharged. But where the accused themselves are not anxious for a formal enquiry, and are prepared to stand their trial before the Sessions Court, the enquiry may be dispensed with and the order of commitment allowed to stand. 1958 All 325 (326) [AIR V 45 C 71] : 1958 Cri L Jour 585.

Government] \* [ \* \* ] or some officer empowered by the [appropriate Government] in this behalf :

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in <sup>a</sup>[India] in which the offender may be found.

•[(5) In this section, the appropriate Government means—

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government ; and

(b) in relation to any other offence, the Central Government.]

[a] Substituted for "Local Government" by A. O. 1937 [1-4-1937]. [b] Substituted for "Governor-General in Council," *ibid.* [c] The words "the Local Government" were omitted, *ibid.* [d] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [e] Inserted by A. O., 1937 [1-4-1937].

### OBJECTS AND REASONS

"The Committee have proposed no change in this clause, but, as Mr. Neogy has intimated that he proposes to dissent on the ground that all offences under the Act should be triable only by a Court of Session, the Committee think it right to express their views in favour of retaining the clause as it stands. Under the Indian Official Secrets Act, 1889, all Magistrates of the first class were authorized to try offences under the Act, while under the Bill it is provided that the only Magistrates who may try cases shall be those described in sub-clause (1) of this clause. Mr. Neogy relies on sub-section (3) of section 10 of the Official

Secrets Act, 1911, in which it is laid down that an offence under that Act shall not be tried by any Court outside the United Kingdom, which has not jurisdiction to try crimes which involve the greatest punishment allowed by law. As the Bill stands, read with the second schedule to the Code of Criminal Procedure, the graver offences punishable under section 3 with imprisonment up to fourteen years will be triable only by Court of Session ; and the Committee are of opinion that the other offences under the Act can properly be tried by Magistrates of the rank named in sub-clause (1)." — S. C. R.

### STATE AMENDMENT

#### MAHARASHTRA

In its application to the State of Bombay, in sub-s. (1), after the words "Government" insert the words "or that of a Presidency Magistrate," and delete the words "which is inferior to that of a District or Presidency Magistrate."

— Bom. Act XXIII of 1951, S. 2 and Sch. Pt. II [w. e. f. 1-7-1953].

#### 14. Exclusion of public from proceedings.

In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

#### 15. Offences by companies, etc.

Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence.

#### 16. Repeals. [Repealed by the Repealing Act, 1927 (XII of 1927), section 2 and Sch.]

# **[THE] OFFICIAL TRUSTEES ACT, 1913**

## **(ACT II of 1913)**

[The Act printed here is as on 1-10-1960.]

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- 32B. Special provision regarding certain Official Trustees affected by States' reorganisation.
33. [*Repealed.*]

**THE SCHEDULE. — [*Repealed.*]**

## STATEMENT OF OBJECTS AND REASONS

"The revision of the law relating to the office of Administrator-General has necessitated the revision of the law relating to the office of Official Trustee. Many of the provisions of the existing law already apply *mutatis mutandis* to both offices and it is considered desirable further to approximate the constitution of these offices and the conditions of their tenure as closely as possible since their duties will be normally discharged by the same person. The existing law relating to the office of official Trustee is contained in the Official Trustees Act XVII of 1864, the Probate and Administration Act, II of 1890, and the Administrator-General's and Official Trustee's Act, V of 1902. The trend of this legislation has, as in the case of the legislation relating to the Administrator-General, been to substitute for a class of Official Trustees remunerated by commission a class of salaried officials whose liabilities are undertaken by the Government in return for fees credited to the Government. The draft Bill carries this process a stage further, and does away with old system of Official Trustees remunerated by commission.

Under the existing law Official Trustees are subject to the control of the Government and of the High Court. For obvious reasons such a dual control is undesirable, and the bulk of the opinion consulted, including that of the Calcutta High Court, is in favour of the transfer of the whole control to the Government. The Bill gives effect to this object. Since Indian law relating to the office of the Official Trustee was enacted, the Public Trustees Act, 1906, 6, Edw. VII, Chap. 55, has been passed, and consideration of some of the provisions of that Statute have enabled useful amendments to be made in the Indian law. The Bill further deals with the qualifications for appointment of Official Trustee, fees, the rule-making power and similar matters on the same lines as those explained in connection with the Bill relating to the office of Administrator-General. Opportunity has been taken to make several minor amendments in the law and to consolidate the enactments relating to the Official Trustee . . ."

— Gazette of India, 1912, Part V, page 202.

## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts X of 1914; XVIII of 1919; XXI of 1922; III of 1951; LXXII of 1952.
- Amended in its application to West Bengal by Beng. Acts XII of 1940; I of 1941.
- Adapted by A. O., 1937; A. C. A. O., 1948; A.L.O., 1950; 2 A.L.O., 1958.

- Adapted in Andhra Pradesh by Andh. A.L.O., 1954; Andh P A.L.O., 1957.
- Extended by Acts IV of 1941; LIX of 1949; XXX of 1950.
- Extended in Bombay by Bom Act IV of 1950.
- Repealed in part by Acts V of 1917; XII of 1927.

## [THE] OFFICIAL TRUSTEES ACT, 1913

(ACT II OF 1913)<sup>a</sup>

[27th February, 1913.]

*An Act to consolidate and amend the Law constituting the office of Official Trustee.*

WHEREAS it is expedient to consolidate and amend the law constituting the office of the Official Trustee; It is hereby enacted as follows :

[a] For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 202; for Report of Select Committee, see *ibid*, 1913, Pt. V, p. 19.

This Act has been extended to Berar by the Berar Laws Act, 1941 (IV of 1941).

It has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to States merged in the State of Bombay : see Bom. Act IV of 1950, S. 3 [30-3-1950.]

## PART I

## PRELIMINARY

## 1. Short title, extent and commencement;

(1) This Act may be called THE OFFICIAL TRUSTEES ACT, 1913.

<sup>a</sup>[(2) It extends to the whole of India <sup>b</sup>[except the State of Jammu and Kashmir].]

(3) It shall come into force on such date<sup>c</sup> as the <sup>A</sup>[Central Government] by notification in the <sup>A</sup>[Official Gazette], may direct.

[a] Substituted for the former sub-section (2), by A. L. O., 1950 [26-1-1950]. [b] Substituted for "except Part B States", by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951]. [c] The Act came into force on 1-4-1914, see Gaz. of Ind., 1914, Pt. I, p. 365.



**2. Interpretation clause.**

In this Act, unless there is anything repugnant in the subject or context,—

(1) "Government" or "the Government" means, in relation to a State, the State Government and, in relation to a Union territory, the Central Government.

(2) "High Court" means—

(a) in relation to a State, the High Court for that State;

(b) in relation to the Union territory of Delhi or Himachal Pradesh, the High Court of Punjab;

(c) in relation to the Union territory of Manipur or Tripura, the High Court of Assam;

(d) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta; and

(e) in relation to the Union territory of the Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala.

(3) "Prescribed" means prescribed by rules under this Act.]

[a] *Substituted* for the former section, by 2 A. L. O. 1956 [1-11-1956].

**3. Extent of jurisdiction of High Courts** [*Repealed by the Adaptation of Laws (No. 2) Order, 1956 (1-11-1956)*]

## PART II

### THE OFFICE OF OFFICIAL TRUSTEE

#### 4. Official Trustees.

<sup>a</sup>[(1) "The Government shall appoint an Official Trustee for each State] :

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Official Trustee for two or more <sup>c</sup>[States] ]

(2) No person shall be appointed to the office of Official Trustee <sup>d</sup>[• • •] who is not—

(a) a Barrister; or

(b) an Advocate, Attorney or Vakil enrolled by a High Court; or

(c) a person holding the office of Deputy Administrator General at the commencement of this Act, <sup>e</sup>[or]

<sup>f</sup>[(d) in the case of a <sup>g</sup>[State] other than <sup>h</sup>[West Bengal], Madras or Bombay, a person already in the service of the <sup>i</sup>[Government].]

<sup>j</sup>[• • • • •]

[a] *Substituted* for the original sub-section (1), by A. O., 1937 [1-4-1937]. [b] *Substituted* for the first paragraph, by 2 A. L. O., 1956 [1-11-1956]. [c] *Substituted* for "Divisions" by A. L. O., 1950 [28-1-1950]. [d] The words "of any of the said Presidencies were omitted by A. O., 1937 [1-4-1937]. [e] *Inverted* by A. O., 1937 [1-4-1937]. [f] *Substituted* for "Bengal", by A. C. A. O., 1948 [23-3-1948]. [g] Sub-section (3) was omitted by A. O., 1937 [1-4-1937].

### STATE AMENDMENT

#### ANDHRA PRADESH

In sub-section (2), clause (d), for "Madras" substitute "Andhra Pradesh, Madras."

—Andhra Adaptation of Laws (Second Amendment) Order, 1954 and Andh. Pra. A. L. (Amendment) Order, 1957.

#### 5. Appointment and powers of Deputy Official Trustee.

The Government may appoint a Deputy or Deputies to assist the Official Trustee; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and, when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Official Trustee.

**6. Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.**

The Official Trustee shall be a corporation sole by the name of the Official Trustee of the [State] for which he is appointed and, as such Official Trustee shall, have perpetual succession and an official seal, and may sue and be sued in his corporate name.

[a] *Substituted* for "Division", by A. L. O., 1950 [28-1-1950].

**OBJECTS AND REASONS**

This section is new. It follows section 1 of the English Public Trustee Act, 1906. This section does away with the cumbrous existing

provisions securing the succession of individual Official Trustees, by declaring an Official Trustee to be a corporation sole. — S. O. R.

**PART III**

**RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE**

**7. General powers and duties of Official Trustee.**

(1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

(a) act as an ordinary trustee;

(b) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent.

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

**Section 6 — Note 1**

[1] Provisions of this Act override S. 6 of Married Women's Property Act. The explanation of this apparent inconsistency is that S. 6 of the Married Women's Property Act does not apply to the corporation sole which has been created under the provisions of this Act. 1937 Cal 379 (380) [AIR V 24] : 1 L R (1937) 2 Cal 67 \* 1955 N U C (Mad) 3895 [AIR V 42].

[2] Under S. 6 of the Act, Official Trustee is corporation sole with perpetual succession and therefore is not servant of Crown. Nor is Official Trustee acting under S. 7 (1) (a), as ordinary trustees, servant of Crown. 1940 Rang 207 (210) [AIR V 27] : 1940 Rang L R 273 (DB).

[3] In face of Ss. 6 and 14, it is idle to contend that the entry of the Official Trustee on the Register of members amounts to notice of a trust and that it offends the provisions of S. 153, Companies Act. 1959 Ker 254 (260) [AIR V 46 C 90] (DB).

**Section 7 — Note 1**

[1] Drawing of distinction between trust

for religious purpose and trust in English form where ultimate beneficiary or one of them is Thakur, does not exclude application of Official Trustees Act or Trusts Act. Where, however, contrary to provisions of Official Trustees Act, the Court permits the Official Trustee to accept the trust and on his application passes an order for conversion of the corpus of the trust into fund, the appointment of the Official Trustee and the order for conversion are nevertheless valid so as to pass a good title to the transferee of the corpus of trust. 1941 Cal 272 (281) [AIR V 28] : 1 L R (1940) 2 Cal 285.

[2] Official Trustee is Government officer appointed by Government and liable to be removed by Government. Official Trustee as such should not be appointed guardian of the property of a minor. 1928 Bom 69 (70, 73) [AIR V 15].

[3] Official Trustee acting under S. 7 (1) (a) as an ordinary trustee is not acting as a servant of the Crown. 1940 Rang 207 (210) [AIR V 27] : 1940 Rang L R 273 (DB) \* 1955 N U C (Mad) 3895 [AIR V 42].

(6) The Official Trustee shall not administer the estate of a deceased person, unless he is expressly appointed sole executor of, and sole trustee under, the will of such person.

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person.

### OBJECTS AND REASONS

This section brings together the powers and duties of the Official Trustee in a convenient manner. It follows mainly the English Act, for example, in prohibiting the Official Trustee from managing insolvent estates or accepting trusts which involve the carrying on of any business. These provisions are necessary as Government has undertaken the civil liabilities of Official Trustee. By sub-section (2) he is declared to have the same powers and liabilities as a private trustee, and is allowed an option to decline any trust. — S. O. R.

"We have amended this section (~~see~~ sub-section (5)) so as to empower the Official Trustee to take over trusts for religious purposes and trusts involving the management of business in cases in which the Government by rules authorises him so to do. The amendment follows the provisions of the Public Trustee Act, 1906.

By an amendment of sub-section (6), we have further provided that the Official Trustee may act as administrator of an estate if he is expressly appointed sole executor and sole trustee under a will." —S.C.R.

### 8. Official Trustee may with consent be appointed trustee of settlement by grantor.

(1) Any person intending to create a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act may by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

### 9. Appointment of Official Trustee as trustee by will.

When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will, the executor of the will of "[the testator] or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to such Official Trustee; and, if such Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in such Official Trustee, and shall be held by him upon the trusts expressed in the said will :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

[a] Substituted for "such testator", by the Repealing and Amending Act, 1919 (XVIII of 1919), S. 2 and Sch. I.

### OBJECTS AND REASONS

"It is considered desirable to make provision for the appointment by will of the Official Trustee as trustee of property bequeathed by the will".—S. O. R.

"We have amended this section so as to

avoid any possibility of conflict with the rights of an executor or administrator under the provisions of the Indian Succession Act, 1865, or the Probate and Administration Act, 1881."—S. C. R.

### Section 8 — Note 1

[1] Testator cannot appoint Official Trustee as constituted by the Act as executor of his will; and if he be so appointed, he cannot get probate by virtue of his office and in his cha-

racter as Official Trustee, and in name of Official Trustee. ('11) 38 Cal 53 (57) (DB).  
[See also ('10) 37 Cal 387 (393, 395) (DB).]

## 10. Power of High Court to appoint Official Trustee to be trustee of property.

(1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the trust, the High Court may on application make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt from the liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the provisions of the 'Trustees' and Mortgagees' Powers Act, 1866, or the Indian Trusts Act, 1882.

[a] Repealed by the Repealing and Amending Act, 1952 (XLVIII of 1952), S. 1 and Sch. I.

## 11. Power of private trustees to appoint Official Trustee to be trustee of property.

(1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him.

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

### OBJECTS AND REASONS

This section "partly follows section 10 of the Act of 1864. Under that section, however, if trustees and all the persons beneficially interested in a trust desired to appoint the Official Trustee they might do so by leave of

the High Court. This section renders such permission unnecessary. It follows the principle of section 31 of the Administrator-General's Act, 1874, and will result in saving trust estates unnecessary expense." — S. O. R.

## 12. Executor or administrator may pay to Official Trustee legacy, share, etc., of infant or lunatic.

(1) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such

### Section 10 — Note 1

[1] Receiver—S by will bequeathing house X to his son N and house Y to his minor son R—N taking possession of both properties—R's estate vesting in Official Trustee—Suit by Official Trustee on behalf of R on basis of S's will or for R's share by partition—Official Trustee appointed Receiver in suit—Property X sold by Court's order to satisfy mortgage created by N over it and proceeds paid into Court to credit of suit—A suing N for specific performance of agreement by N to execute mortgage of property X in his favour—Official Trustee as Receiver not impleaded—A

granted money decree for amount advanced by him and charged over sale proceeds of X property to extent of decretal amount—In Official Trustee's suit will found valid and R held entitled to property Y with mesne profits—Application by Official Trustee as decree-holder for attachment of balance of sale proceeds of property X—A held entitled to enforce his charge under decree passed by competent Court—Appointment of Official Trustee as Receiver held did not give R a charge. 1942 Mad 670 (671, 672) [AIR V 29] : ILR (1942) Mad 933 (DB).

gift is made, or executor or administrator by whom such legacy or share is payable or transferable or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

### 13. Official Trustee not to be required to give bond or security.

(1) No Official Trustee shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act.

(2) No Official Trustee or Deputy Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

#### OBJECTS AND REASONS

"Under section 6 of the Act of 1864 it is obligatory for the Official Trustee to give security. This clause in so far as it does not require security follows section 12 of the Administrator-General's Act, 1854. As the

Administrator-General will, as a rule, also be Official Trustee it does not seem necessary to take security from him in one capacity and not in the other."

—S.O.R.

### 14. Entry of Official Trustee not to constitute notice of a trust.

The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust.

#### OBJECTS AND REASONS

This section "provides that the entry of the Official Trustee in the Books of a company is not to constitute notice of a trust. A company, therefore, will not be entitled under section 53 of the Indian Companies Act, VI of 1882, to object to entering the name of the

Official Trustee on its register, and the fact that the Official Trustee is a corporation will not affect his dealings with the outside world. This clause follows section 11 (5) of the English Public Trustee Act, 1906." — S.O.R.

#### STATE AMENDMENT

##### SECTION 14-A

##### WEST BENGAL

After Section 14, the following section shall be inserted namely :—

"14A. *Power to examine on oath.*—The Official Trustee for West Bengal may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorised to administer) any person who is willing to be examined by him regarding such question."—Beng. Act I of 1941, S. 3 [20-3-41].

### 15. Liability of Government.

(1) The revenues of the Government [\* \* \*] shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases

#### Section 15 — Note 1

[1] If any action is to be brought against the Official Trustee where Government is sought to be made liable notice under S. 80, Civil P. C. is necessary. But in a suit against

Official Trustee for breaches in respect of a trust administered by him as an ordinary trustee consent of Governor is not necessary. 1955 N U C (Mad) 3895 [AIR V 42].

the Official Trustee shall not, nor shall the revenues <sup>b</sup>[of the Government] <sup>a</sup>[\* \* \*] be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render the revenues <sup>b</sup>[of the Government] <sup>a</sup>[\* \* \*] or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act.

[a] The words "of India" were *omitted* by the Official Trustees and Administrator General's Acts Amendment Act, 1922 (XXI of 1922), S. 3. [b] *Inserted, ibid.* [c] The words "or of the Government of India" were *omitted* by A. O. 1937 [1-4-1937].

#### OBJECTS AND REASONS

This section "makes the revenue of Government liable for the Acts of the Official Trustee, except in cases where the Official Trustee and his subordinates have not contributed to the liability or where loss could not have been

averted by the exercise of reasonable diligence. These exceptions . . . . . are contained in section 7 of the English Act which it is deemed advisable to follow."

—S. O. R.

#### 16. Notice of suit not required in certain cases.

Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply to any suit against the Official Trustee in which no relief is claimed against him personally.

### PART IV

#### FEEES

#### 17. Fees.

(1) There shall be charged in respect of the duties of the Official Trustee such fees, whether by way of percentage or otherwise, as the Government may prescribe :

Provided that in the case of a trust accepted by the Official Trustee before the commencement of this Act the fees prescribed under this section shall not exceed the fees leviable in respect of such trust under the Official Trustees Act, 1864,<sup>a</sup> as subsequently amended.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government <sup>b</sup>[\* \* \*] against loss under this Act.)

[a] *Repealed* by this Act. [b] The words "of India" were *omitted* by the Official Trustees and Administrator-General's Acts Amendment Act, 1922 (XXI of 1922), S. 4.

#### 18. Disposal of fees.

(1) All expenses which might be retained or paid out of the trust fund, if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be retained or paid in like manner as and in addition to such expenses.

(2) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government <sup>a</sup>[\* \* \*].

[a] Words "of India" were *omitted* by the Official Trustees and Administrator-General's Acts Amendment Act, 1922 (XXI of 1922), S. 4.

### PART V

#### AUDIT

#### 19. Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.

(1) The accounts of the Official Trustee shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts, and shall forward to Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing—

- (a) whether the accounts contain a full and true account of everything which ought to be contained therein, and
- (b) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and
- (c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder;

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

#### STATE AMENDMENT

##### WEST BENGAL

For clause (a) of sub-section (2), the following clauses shall be substituted, namely :—

- “(a) Whether the accounts have been audited in the prescribed manner, and
- (aa) Whether, so far as can be ascertained by such audit, the accounts contain a full and true account of everything which ought to be contained therein, and”.

—Beng. Act XII of 1940, S. 3 [1-9-1940].

#### 20. Auditor's power to summon witnesses and to call for documents.

(1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908,

- (a) to summon any person whose presence he may think necessary to attend him from time to time, and
- (b) to examine any person, on oath to be by him administered, and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person, and
- (d) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined shall be deemed to have committed an offence within the meaning of, and punishable under section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to Government.

#### 21. Costs of audit, etc., how paid.

The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the Government and shall be defrayed in the prescribed manner.

#### 22. Right of beneficiary to inspection and copies of accounts.

Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Indian Trusts Act, 1882<sup>a</sup>, shall affect the provisions of this section.

[a] See S. 57 of that Act.

## PART VI

### MISCELLANEOUS

#### **23. Transfer to Government of accumulations in the hands of Official Trustee.**

When any moneys payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after the commencement<sup>a</sup> of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such money shall be transferred in the prescribed manner to the account and credit of the Government <sup>b</sup>[\* \* \*]:

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

[a] That is 1-4-1914. [b] The words "of India" were *omitted* by the Official Trustees and Administrator-General's Acts Amendment Act, 1922 (XXI of 1922), S. 4.

#### **24. Mode of proceeding by claimant to recover money so transferred.**

(1) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government <sup>a</sup>[\* \* \*] shall pay to the claimant the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the <sup>b</sup>[Government], and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings.

<sup>c</sup>[ \* \* \* \* \* ]

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

[a] The words "of India" were *omitted* by the Official Trustees and Administrator-General's Acts Amendment Act, 1922 (XXI of 1922), S. 4. [b] *Substituted* for "Secretary of State for India in Council," by A. O., 1937 [1-4-1937]. [c] The Proviso was *omitted* by A. L. O., 1950 [26-1-1950].

#### **25. Power of High Court to make orders in respect of property vested in Official Trustee.**

The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the interest or produce thereof.

#### **26. Who may apply for order under Act.**

Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof.

#### **27. Order of Court to have effect of a decree.**

Any order made by a High Court under this Act shall have the same effect as a decree.

#### **28. General powers of administration.**

The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure—

(a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him; and

#### **Section 25 — Note 1**

[1] The question whether the grandsons of the settlor had only a vested remainder or a contingent remainder cannot be decided under S. 25 and should be referred to be ad-

judicated in an Originating Summons. 1955 N U C (Mad) 3895 [AIR V 42].

[2] Power of High Court to pass orders on application presented to it is wide. 1955 N U C (Mad) 3895 [AIR V 42].



- (b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

**29. Transfer of trust property by Official Trustee to original trustee or any other trustee.**

(1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

- (a) the original trustee (if any) ; or
- (b) any other lawfully appointed trustee ; or
- (c) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer :

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

**30. Rules.**

(1) The Government shall make rules<sup>a</sup> for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the accounts to be kept by the Official Trustee and the audit and inspection thereof ;
- (b) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee ;
- (c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required ;
- (d) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents ;
- (e) the realization of the cost of preparing any such statements, schedules or other documents ;

b[\* \* \* \* \*]

- (f) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed ;
- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed ;
- (h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination ;
- (i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business ; and
- (j) any matter in this Act directed to be prescribed.

(3) Rules made under the provisions of this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

[a] For rules made by the Governor-General in Council for the former Presidency of Bengal, *see* Gaz. of Ind., 1914, Pt 1, page 385; and for other States, *see* Local Rules and Orders. [b] Clause (ee) was omitted by the Destruction of Records Act, 1917 (V of 1917), S. 6 and Schedule.

### SECTION 30-A WEST BENGAL

### STATE AMENDMENT

After section 30 the following section shall be *inserted*, namely :—

“**30-A. False evidence.**—Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.”

—Beng. Act I of 1941, S. 4 [20-3-1941].

**31.** Division of Presidency into Provinces. [*Repealed by A. O., 1937.*]

**32.** Saving of provisions of Indian Registration Act, 1908.

Nothing contained in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908.

\*[**32A.** Saving.

<sup>b</sup>[(1)] The amendments<sup>c</sup> of this Act which come into force on <sup>d</sup>[the 26th day of January, 1950], shall not affect any legal proceedings pending in any Court on that date or be construed as automatically transferring any property from any Official Trustee to any other Official Trustee : but nothing in this section shall be construed as preventing a transfer of any such property in accordance with any of the other provisions of this Act.]

<sup>e</sup>[(2) The amendments of this Act, which come into force on the 26th day of January, 1950, shall not affect any legal proceeding arising out of the application of this Act to any person in a Part B State<sup>f</sup> and pending in any Court on the said date or the administration of any property or estate of any such person which was immediately before that date vested in an Official Trustee under this Act, and the provisions of this Act shall, notwithstanding the said amendments, continue to apply with necessary modifications, in relation to such proceedings or such property or estate, as the case may be.]

[a] *Inserted* by A. O., 1937 [1-4-1937]. [b] Re-numbered as sub-section (1) by A. L. O., 1950 [26-1-1950]. [c] That is, the amendments made in sections 1, 2, 4 and 24 by A. L. O., 1950. [d] *Substituted* for “the commencement of Part III of the Government of India Act, 1935”, by A. L. O., 1950 [26-1-1950]. [e] *Added, ibid.* [f] The following were Part B States : Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin.

\*[**32B.** Special provision regarding certain Official Trustees affected by States’ reorganisation.

The amendments<sup>b</sup> of this Act which come into force on the 1st November, 1956, shall not affect any legal proceedings pending in any Court on that date and where, on account of the reorganisation of States under the States Reorganisation Act, 1956, or the Bihar and West Bengal (Transfer of Territories) Act, 1956, the whole or any part of a State is transferred to any other State, such transfer of the territory of the State shall not be construed as automatically transferring any property from any Official Trustee to any other Official Trustee ; but if, by reason of such transfer of territory, it appears to the Central Government that the whole or any part of the property vested in an Official Trustee, should be vested in another Official Trustee, that Government may direct that the property will be so vested and thereupon it shall vest in that other Official Trustee and his successors as fully and effectually for the purposes of this Act, as if it had been originally vested in him under this Act.]

[a] *Inserted* by 2 A. L. O., 1956 [1-11-1956]. [b] That is, the amendments made in sections 2, 3 and 4 by 2 A. L. O., 1956.

**33.** Repeals. [*Repealed by the Repealing Act, 1927 (XII of 1927), S. 2 and Schedule.*]

THE SCHEDULE.—Enactments repealed. [*Repealed by the Repealing Act, 1927 (XII of 1927), S. 2 and Schedule.*]

# **[THE] OIL AND NATURAL GAS COMMISSION ACT, 1959**

**(ACT XLIII of 1959)**

[The Act printed here is as on 1-10-1960]

## **C O N T E N T S**

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## **STATEMENT OF OBJECTS AND REASONS**

"The establishment of the Oil and Natural Gas Commission in August 1956, was the first concrete step taken by Government to carry out *inter alia* geological and geophysical surveys for discovering petroleum resources in the country and developing them in the public sector. The Commission was organized, in the first instance, as an ordinary Government Department; but even within this short period of less than three years, the size of this organisation and the volume of work handled by it have increased very rapidly. The magnitude of its programmes and activities is likely to

increase further in the near future. In the light of the experience gained so far, it is felt that the powers already delegated to the Commission or a mere amplification of these powers would not suffice. Exploration work in the public sector has reached a stage where for efficient and expeditious progress much more autonomy and elasticity are required than would be possible if the Commission continued to work as a Government Department. Oil industry being a highly integrated one, exploration work and exploitation should more appropriately be entrusted to an agency

which can function more or less as a commercial agency in the private sector. The Bill accordingly proposes to convert the existing organisation into a statutory corporate body with the same nomenclature.

Under the Bill the Commission will consist of not less than three members including the Chairman and one of these members will be exclusively in charge of the finances of that body. The Commission's main functions will be—(i) to organize and implement programmes for the development of petroleum resources; (ii) to carry out necessary surveys for the exploration of such resources and the drilling and other prospecting operations required for this purpose; (iii) to promote the production of petroleum and its refinement and the sale of petroleum and petroleum products produced by it; and (iv) to advise Government as and when advice is sought. The Commission will generally have full powers to carry out its functions under the Bill.

The Bill makes adequate provision for the exercise of suitable control over the Commission. It has been provided that the previous approval of the Government should be obtained by the Commission before exercising its

powers in respect of certain specific matters. The Commission will also be subject to the directions of Government in the discharge of its functions. Provision has also been made for financial control over the Commission. The submission of an annual statement of the programme and activities undertaken and likely to be undertaken by the Commission, and of financial estimates in respect thereof has been made obligatory. In addition, the funds of the Commission are required to be deposited in the Reserve Bank or a Government Treasury or to be invested in securities approved by Government; and the scrutiny of the accounts of the Commission by the Comptroller and Auditor General of India has been ensured. Parliament also will be kept in touch with the working of the Commission as the Bill requires copies of its annual report and the Comptroller and Auditor General's audit report to be laid before both Houses of Parliament.

The Bill also contains ancillary provisions in respect of various other matters like the transfer of staff, the vesting of properties in the Commission, etc."

—Gaz. of Ind., 1959, Extra., Pt. II-Sec. 2, page 600.

## [THE] OIL AND NATURAL GAS COMMISSION ACT, 1959

(ACT XLIII OF 1959)<sup>a</sup>

[18th September, 1959.]

*An Act to provide for the establishment of a commission for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by it and for matters connected therewith.*

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, see Gaz. of India, 1959, Ext., Pt. II, Sec. 2 p. 600.

### CHAPTER I

#### PRELIMINARY

#### 1. Short title, extent and commencement.

(1) This Act may be called THE OIL AND NATURAL GAS COMMISSION ACT, 1959.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date<sup>a</sup> as the Central Government may, by notification in the Official Gazette, appoint.

[a] The Act came into force on 15-10-1959 : see S. O. 2302, D/- 14-10-1959 in Gaz. of Ind., 1959, Extra., Pt. II, Sec. 3 (ii), p. 515.

#### 2. Definitions.

In this Act, unless the context otherwise requires,—

(a) "chairman" means the chairman of the Commission;

(b) "Commission" means the Oil and Natural Gas Commission established under section 3;

(c) "existing organisation" means the body set up in pursuance of the resolution of the Government of India, No. 22/29/55-ONG, dated the 14th August, 1956;

(d) "Fund" means the fund referred to in section 19;

(e) "member" means a member of the commission and includes the chairman;

(f) "petroleum" has the same meaning<sup>a</sup> as in the Petroleum Act, 1934, and includes natural gas;

[a] Section 2 (a) of the Petroleum Act, 1934 defines petroleum as—

"(a) 'petroleum' means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon;"

(g) "prescribed" means prescribed by rules made under this Act.

## CHAPTER II

### THE OIL AND NATURAL GAS COMMISSION

#### 3. Establishment and incorporation of the Commission.

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint<sup>a</sup> in this behalf, there shall be established a Commission to be called the Oil and Natural Gas Commission.

(2) The Commission shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall by the said name sue and be sued.

[a] The date appointed is 15-10-1959 : see S. O. 2303, D/- 14-10-1959 in Gaz. of Ind., 1959, Extra., Pt. II, S. 2 (ii), p. 515.

#### 4. Composition of the Commission.

The Commission shall consist of a chairman and not less than two, and not more than eight, other members appointed by the Central Government and the members may be required to render whole time or part time service, as the Central Government may direct :

Provided that one of the members shall be a whole-time Finance Member in charge of the financial matters relating to the Commission :

Provided further that the Central Government may, if it thinks fit, appoint one of the members as vice-chairman of the Commission.

#### 5. Term of office and conditions of service of members.

(1) The term of office and conditions of service of the chairman and other members shall be such as may be prescribed :

Provided that the Central Government may, if it thinks fit, terminate the appointment of any member before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same.

(2) Any member may resign his office by giving notice in writing to the Central Government, and on such resignation being notified in the Official Gazette by that Government, shall be deemed to have vacated his office.

(3) A casual vacancy created by the resignation of a member under sub-section (2) or for any other reason may be filled by fresh appointment.

#### 6. Disqualifications for being appointed, or for continuing, as member of the Commission.

A person shall be disqualified for being appointed or for continuing as a member, if he has, directly or indirectly, any interest in a subsisting contract made with, or in any work being done for, the Commission.

#### 7. Temporary absence of member.

If any member is by infirmity or otherwise rendered temporarily incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Central Government may appoint another person to act in his place during his absence.

**8. Vacancies, etc., not to invalidate acts and proceedings of the Commission.**

No act or proceeding of the Commission shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

**9. Meetings of the Commission.**

(1) The Commission shall meet at such times and places and shall, subject to the provisions of sub-sections (2) and (3), observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at meetings) as may be provided by regulations made under this Act.

(2) The chairman or, in his absence, the vice-chairman, if any, or in the absence of the chairman and of the Vice-Chairman, if any, any member chosen by the members from among themselves, shall preside at a meeting of the Commission.

(3) All questions at a meeting of the Commission shall be decided by a majority of the votes of the members present and voting, and in the case of an equality of votes, the chairman or, in his absence, the person presiding, shall have a second or casting vote :

Provided that the person presiding may, in his discretion, reserve any matter for the consideration of the Central Government.

**10. Temporary association of persons with the Commission for particular purposes.**

(1) The Commission may associate with itself in such manner and for such purposes, as may be provided by regulations made under this Act, any person whose assistance or advice it may desire in performing any of its functions under this Act.

(2) A person associated with it by the Commission under sub-section (1) for any purpose shall have a right to take part in the discussions of the Commission relevant to that purpose, but shall not have a right to vote at a meeting of the Commission, and shall not be a member for any other purpose.

**11. Authentication of orders and other instruments of the Commission.**

All orders and decisions of the Commission shall be authenticated by the signature of the chairman or any other member authorised by the Commission in this behalf, and all other instruments issued by the Commission shall be authenticated by the signature of an officer of the Commission authorised in like manner in this behalf.

**12. Staff of the Commission.**

(1) Subject to the provisions of section 15, the Commission may, for the purpose of enabling it efficiently to perform its functions or exercise its powers under this Act, appoint such number of employees as it may consider necessary.

(2) The functions and the terms and conditions of service of such employees shall be such as may be provided by regulations made under this Act.

**13. Transfer of service of existing employees to the Commission.**

(1) Subject to the provisions of this Act, every person employed by the existing organisation immediately before the date of establishment<sup>a</sup> of the Commission shall, on and from such date, become an employee of the Commission with such designation as the Commission may determine and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions as he would have held the same on such date if the Commission had not been established and shall continue to do so unless and

until his employment in the Commission is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Commission :

Provided that—

- (a) the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government ;
  - (b) any service rendered in the existing organization by any such person shall be deemed to be service under the Commission ; and
  - (c) all persons employed by the Commission on the date of its establishment, who, immediately before such date, hold, in a permanent or quasi-permanent capacity, posts in connection with the affairs of the Union or of any State, but not posts in the existing organisation, shall be treated as Government servants on foreign service with the Commission.
- (2) The commission may employ any person who has become its employee under sub-section (1), in such capacity as it thinks fit, and every such employee shall be bound to discharge his functions accordingly.

[a] That is 14-10-1959.

### CHAPTER III

#### POWERS AND FUNCTIONS OF THE COMMISSION

##### 14. Functions of the Commission.

(1) Subject to the provisions of this Act, the functions of the Commission shall generally be to plan, promote, organise and implement programmes for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by it and to perform such functions as the Central Government may, from time to time, assign to the Commission.

(2) In particular and without prejudice to the generality of the foregoing provision, the Commission may take such steps as it thinks fit—

- (a) for the carrying out of geological and geophysical surveys for exploration of petroleum;
- (b) for the carrying out of drilling and other prospecting operations to prove and estimate the reserves of petroleum;
- (c) to undertake, encourage and promote such other activities as may lead to the establishment of such reserves;
- (d) to undertake, assist or encourage and promote the production of petroleum from such reserves and its refining;
- (e) for the transport and disposal of natural gas and refinery gases produced by the Commission :

Provided that no industry, which will use any of these gases as a raw material, shall be set up by the Commission without the previous approval of the Central Government;

- (f) to undertake, encourage and promote geological, chemical and other scientific investigations whether in or outside the laboratory;
  - (g) to undertake, assist or encourage the collection, maintenance and publication of statistics, bulletins and monographs;
  - (h) to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribed.
- (3) In the discharge of its functions under this Act, the Commission shall be bound by such directions as the Central Government may, for reasons to be stated in writing, give to it from time to time.

### 15. Powers of the Commission.

The Commission may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act :

Provided that before exercising its powers in respect of the following matters, it shall obtain the previous approval of the Central Government, namely :—

- (a) the creation of any post the salary or honorarium of which would be rupees two thousand a month or more or would be on a scale the maximum of which is rupees two thousand a month or more, and the appointment of any person to any such post :
- (b) the implementation of any scheme or proposal which will involve a capital expenditure exceeding thirty lakhs of rupees;
- (c) the disposal of any property, right or privilege, the original or book value of which exceeds ten lakhs of rupees.

## CHAPTER IV

### FINANCE, ACCOUNTS, AUDIT AND REPORTS

### 16. Capital of the Commission.

(1) All non-recurring expenditure incurred by the Central Government for or in connection with the existing organisation up to the date of establishment of the Commission and declared to be capital expenditure by that Government, shall be treated as capital expenditure provided by that Government to the Commission, and shall be brought into the books of the Commission.

(2) The Central Government may, after due appropriation made by Parliament in this behalf, provide any further capital that may be required by the Commission for the carrying on of the business of the Commission or for any purpose connected therewith on such terms and conditions as that Government may determine.

### 17. Vesting of property in the Commission.

All property acquired and all works constructed or under construction by or on behalf of the Central Government for the purposes of the existing organisation up to the date of establishment of the Commission shall, on such date, vest in the Commission and all income derived and all expenditure incurred in this behalf shall be brought into the books of the Commission.

### 18. Commission to have rights, liabilities and obligations of the Central Government in certain cases.

All rights, liabilities and obligations of the Central Government which, whether arising out of any contract or otherwise, were acquired or incurred by it in connection with the existing organisation or for any of the purposes referred to in this Act, before the date of establishment<sup>a</sup> of the Commission shall be deemed to have been acquired or incurred by the Commission and shall be the rights, liabilities and obligations respectively of the Commission.

[a] That is 15-10-1959.

### 19. Fund of the Commission.

(1) The Commission shall have its own Fund and all receipts of the Commission, whether from grants made by the Central Government or otherwise, shall be carried thereto and all payments by the Commission made therefrom.

(2) The Commission may expend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund.

(3) All monies of the Commission shall be deposited in the Reserve Bank of India or with the agents of that Bank or where there is neither an office of that



Bank, nor an agent of that Bank, in a Government Treasury, or be invested in such securities as may be approved by the Central Government.

*Note:*—The Act makes adequate provision for the exercise of suitable financial control by the Government over the Commission. The submission of an annual statement of the programme and activities undertaken and likely to be undertaken by the Commission, and of financial estimates in respect thereof has been made obligatory. In addition, the funds of the Commission are required to be deposited in the Reserve Bank or a Government Treasury or to be invested in securities approved by Government; and the scrutiny of the accounts of the Commission by the Comptroller and Auditor-General of India has been ensured.

## 20. Borrowing of money.

The Commission may, with the previous approval of the Central Government, borrow money in the open market or otherwise for the purposes of carrying out its functions under this Act.

## 21. Budget.

(1) (a) The Commission shall, by such date in each year as may be prescribed, submit to the Central Government for approval a budget in the prescribed form for the next financial year, showing the estimated receipts and expenditure, and the sums which would be required from the Central Government, during that financial year.

(b) If any sum granted by the Central Government remains wholly or partly unspent in any financial year, the unspent sum may be carried forward to the next financial year and taken into account in determining the sum to be provided by the Central Government for that year.

(2) Subject to the provisions of sub-section (3), no sum shall be expended by or on behalf of the Commission unless the expenditure is covered by provision in the budget approved by the Central Government.

(3) The Commission may sanction any re-appropriation from one head of expenditure to another or from a provision made for one scheme to that for another :

Provided that, except with the previous approval of the Central Government—

(a) no re-appropriation from the head 'loan' to another head of expenditure and vice versa in the budget shall be sanctioned by the Commission ;

(b) no re-appropriation which has the effect of augmenting the provision under any head of expenditure as approved by the Central Government by more than twenty per cent. or seven and a half lakhs of rupees, whichever is less, shall be made.

## 22. Annual reports, accounts and audit.

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and balance sheet in accordance with such general directions as may be issued, and in such form as may be prescribed, by the Central Government in consultation with the Comptroller and Auditor-General of India.

(b) The accounts of the Commission shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

### **23. Returns and Reports.**

(1) The Commission shall furnish to the Central Government at such time and in such form and in such manner, as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by the Commission as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Commission shall, as soon as possible after the commencement of each financial year, submit to the Central Government a report in such form and before such date as may be prescribed, giving a true and full account of its activities, policy and programme during the previous financial year and an account of the activities likely to be undertaken during the current financial year.

(3) A copy of the report received under sub-section (2) shall be laid before each House of Parliament.

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## CHAPTER V MISCELLANEOUS

### **24. Compulsory acquisition of land for the Commission.**

Any land required by the commission for carrying out its functions under this Act shall be deemed to be needed for a public purpose and such land shall be acquired for the Commission as if the provisions of Part VII of the Land Acquisition Act, 1894, were applicable to it and the Commission were a company within the meaning of clause (3) of section 3 of the said Act.

### **25. Power of entry.**

Any employee of the Commission, generally or specially authorised by it, may at all reasonable times enter upon any land or premises and there do such things as may be reasonably necessary for the purpose of lawfully carrying out any of its works or of making any survey, examination or investigation preliminary or incidental to the exercise of powers or the performance of functions by the Commission under this Act.

### **26. Delegation of powers and duties.**

The Commission may, by general or special order in writing, direct that all or any of the powers or duties which may be exercised or discharged by it shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised or discharged also by any person specified in this behalf in the order.

### **27. Members and employees of the Commission to be public servants.**

All members and employees of the Commission, shall, when acting or purporting to act in pursuance of the provisions of this Act, or of any rule or regulation made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

### **28. Protection of action taken under Act.**

No suit, prosecution or other legal proceeding shall lie against the Commission or any member or employee of the Commission for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation made thereunder.

**29. Liability of Commission to pay taxes and fees.**

The Commission shall be deemed to be a company within the meaning of any enactment for the time being in force providing for the levy of any tax or fee by the Central Government or a State Government and shall be liable to pay such tax or fee accordingly.

**30. Dissolution of the Commission.**

(1) The Central Government may, by notification in the Official Gazette, direct that the Commission shall be dissolved from such date as may be specified in the notification and thereupon the Commission shall be deemed to be dissolved accordingly.

(2) On and from the said date—

- (a) all assets, liabilities and obligations acquired or incurred by the Commission for purposes of the Commission or for any of the purposes referred to in this Act shall vest in the Central Government, and
- (b) all members shall vacate their offices as members of the Commission.

**31. Power of Central Government to make rules.**

(1) The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup> to give effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters, namely :—

- (a) the term of office of, and the manner of filling casual vacancies among, the members, and their conditions of service including the salaries, remuneration and allowances to be paid to them and the travelling and daily allowances to be drawn by them when they are on tour;
- (b) the disqualifications for membership of the Commission and the procedure to be followed in removing a member who is or becomes subject to any disqualification;
- (c) the procedure to be followed in the discharge of functions by members;
- (d) the date by which, and the form in which, the budget shall be submitted in each year under sub-section (1) of section 21;
- (e) the procedure to be followed for placing the Commission in possession of funds;
- (f) the procedure to be followed and the conditions to be observed in borrowing moneys or in granting loans;
- (g) the conditions subject to which, and the mode in which, contracts may be entered into by or on behalf of the Commission;
- (h) the form and manner in which the accounts of the Commission shall be maintained under sub-section (1) of section 22;
- (i) the form and manner in which returns, reports or statements shall be submitted under section 23;
- (j) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

[a] Rules are not published in the Official Gazette up to the date of printing of this Act.

**32. Power of Commission to make regulations.**

(1) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with this Act and the rules made thereunder, for enabling it to discharge its functions under this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely :—

- (a) the terms and conditions of appointment and service and the scales of pay of employees of the Commission, including payment of travelling and daily allowances in respect of journeys undertaken by such employees for the purposes of this Act;
- (b) the time and place of meetings of the Commission, the procedure to be followed in regard to the transaction of business at such meetings and the quorum necessary for the transaction of business at a meeting;
- (c) the maintenance of minutes of meetings of the Commission and the transmission of copies thereof to the Central Government;
- (d) the persons by whom, and the manner in which payments, deposits and investments may be made on behalf of the Commission;
- (e) the custody of moneys required for the current expenditure of the Commission and the investment of moneys not so required;
- (f) the maintenance of accounts.

(3) The Central Government may, by notification in the Official Gazette, amend, vary or rescind any regulation which it has approved; and thereupon the regulation shall have effect accordingly but without prejudice to the exercise of the powers of the Commission under sub-section (1).

**[THE] OILFIELDS (REGULATION AND DEVELOPMENT) ACT, 1948****(Act LIII of 1948)**

[The Act printed here is as on 1-10-1960.]

**C O N T E N T S****SECTIONS**

- 1. Short title, extent and commencement.
- 2. *[Repealed.]*
- 3. Definitions.
- 4. No mining lease to be valid unless it is in accordance with this Act.
- 5. Power to make rules as respects mining leases.
- 6. Power to make rules as respects mineral oils development.

- 7. Power to make rules for modification of existing leases.
- 8. Delegation.
- 9. Penalties.
- 10. Rules to be laid before the Legislature.
- 11. Power of inspection.
- 12. Relaxation of rules in special cases.
- 13. Act to be binding on the Government.
- 14. Protection of action taken in good faith.

**STATEMENT OF OBJECTS AND REASONS**

"The question of Central regulation of mines and oilfields and mineral development has been engaging the attention of Government for some time. The need for Central regulation was amply illustrated in the last war when certain key minerals had to be controlled under the Defence of India Act. It is now well recognised that a planned and uniform policy of mineral development is

essential to economic and industrial progress. The Industrial Policy Resolution of the 6th April 1948 included minerals amongst the industries whose location must be governed by economic factors of all-India import or which require considerable investment or a high degree of technical skill and must consequently be the subject of Central regulation and control.

This Bill has accordingly been drafted under Item 36 of the Federal Legislative List of the Seventh Schedule to the Government of India Act, 1935, to regulate mines and oilfields and mineral development on the lines contemplated in the Industrial Policy Resolution of the 6th April 1948. It seeks to give powers to the Central Government to frame rules for the regulation of the terms and conditions of mining leases, as also for the conservation and development of minerals. It also provides for modification of existing leases on payment of compensation. Clause 8 provides for delegation of powers to Provincial Governments or any officers or authority as

may be specified in this behalf, e. g., a Coal Commission. Clause 11 confers powers of entry and inspection on any officers authorised by the Central Government in this behalf. Finally, there is a clause prescribing penalties for contravention of any of the provisions of the Act or the rules made thereunder. The rules made under the Act will be laid before the Legislature as soon as may be after they are made, while rules relating to compensation to be paid for modification of existing leases will not be operative unless and until they are approved by the Legislature."

— Gazette of India, 1948, Part V, page 601.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts XL of 1949; III of 1951; LXVII of 1957.
- Adapted by A. L. O., 1950.
- Extended by Acts LIX of 1949; XXX of 1950.

#### COGNATE ACTS AND PROVISIONS

1. MINES ACTS, XXXV OF 1952.
2. MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, LXVII OF 1957.

### [THE] OILFIELDS (REGULATION AND DEVELOPMENT) ACT, 1948 (ACT LIII OF 1948)\*

[8th September, 1948]

*An Act to provide for the regulation of <sup>b</sup>[\* \*] oilfields and for the development of <sup>c</sup>[mineral oil resources].*

WHEREAS it is expedient in the public interest to provide for the regulation of <sup>b</sup>[\* \*] oilfields and for the development of <sup>c</sup>[mineral oil resources] <sup>d</sup>[\* \* \*];

It is hereby enacted as follows:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1948, Part V, p. 601.

This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been applied to all the partially excluded areas in —

Assam, see Assam Gaz., 1950, Pt. II, p. 173;

C. P. and Berar, see C. P. and Berar Gaz., 1948, Pt. I, p. 809;

Madras, see Ft. St. Geo. Gaz., 1950, Pt. I, p. 142;

Orissa, see Ori. Gaz., 1950, Extra., 25-1-1950.

It has also been applied to Darjeeling district in West Bengal, see Cal. Gaz., 1949, Pt. I, p. 269.

[b] The words "Mines and" were omitted in the long title and in the Preamble, by the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), S. 32 and Sch. III [w. e. f. 1-6-1958]. [c] Substituted for "minerals", *ibid.* [d] The words "to the extent hereinafter specified" were omitted, *ibid.*

#### 1. Short title, extent and commencement.

(1) This Act may be called THE <sup>a</sup>[OILFIELDS] (REGULATION AND DEVELOPMENT) ACT, 1948.

<sup>b</sup>[(2) It extends to the whole of India <sup>c</sup>[\* \* \*].]

(3) It shall come into force on such date<sup>d</sup> as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

[a] Substituted for "Mines and Minerals", by the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), S. 32 and Sch. III [w. e. f. 1-6-1958]. [b] Substituted for the former sub-section, by A. L. O., 1950 [26-1-1950]. [c] The words "except the State of Jammu and Kashmir" were omitted by Act LXVII of 1957, S. 32 and Sch. III [w. e. f. 1-6-1958]. [d] The Act came into force on 25-10-1949, see Notifn. No. M-II-155 (24)-1, D/- 18-10-1949, published in Gaz. of Ind., 1949, Extra., p. 2075.

**2. Declaration as to expediency of control by Central Government.** [*Omitted by the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), S. 32 and Sch. III [w. e. f. 1-6-1958].*]

**3. Definitions.**

In this Act, unless there is anything repugnant in the subject or context,—

- (a) the expressions “lessor” and “lessee” respectively include a licensor and licensee;
- (b) “mine” means any excavation for the purpose of searching for or obtaining <sup>a</sup>[mineral oils] and includes an oilwell;
- (c) <sup>a</sup>“mineral oils” include natural gas and petroleum ;
- (d) “mining lease” means a lease granted for the purpose of searching for, winning, working, getting, making merchantable, carrying away or disposing of <sup>a</sup>[mineral oils] or for purposes connected therewith, and includes an exploring or a prospecting license ;
- (e) “oilfield” means any area where any operation for the purpose of obtaining natural gas and petroleum, crude oil, refined oil, partially refined oil and any of the products of petroleum in a liquid or solid state, is to be or is being carried on.

[a] *Substituted for “minerals” by the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), S. 32 and Sch. III [w. e. f. 1-6-1958].*

**4. No mining lease to be valid unless it is in accordance with this Act.**

(1) No mining lease shall be granted after the commencement<sup>a</sup> of this Act otherwise than in accordance with the rules made under this Act.

(2) Any mining lease granted contrary to the provisions of sub-section (1) shall be void and of no effect.

[a] That is, 25-10-1949.

**Section 3 — Note 1**

[1] A mining sub-lease made after the coming into force of the Act and the Rules is included in the term ‘mining lease’ as defined in S. 3 (d). The rules made under Ss. 5 and 6 would apply to such a sub-lease, though the main lease is granted before the Act and the Rules came into force. 1960 S C 1373 (1375) [AIR V 47 C 250]+1954 Pat 340 (343) [AIR V 41 C 119] : 33 Pat 198 (DB).

**Section 4 — Note 1**

[1] The Government may treat an application for a mining lease as valid and act upon it even though the application is not in conformity with the rules. Hence, a lease granted by the Government on any such application is not void under S. 4 of the Act. 1959 Punj 589 (591) [AIR V 46 C 185]. (Application rejected by State Government for non-compliance with rules—Central Government in review treating the application as valid and acting upon it—High Court will not interfere with the order.)

[2] Rules made under Mines and Minerals Act are mandatory—Lease of Mica mining area granted by Government in violation of Rr. 67 and 68 is void. 1956 Pat 506 (509) [(S) AIR V 43 C 119] : 35 Pat 700 (DB).

[3] A lease granted under the Act before the Rules were framed cannot be treated as void because it is not in accordance with the rules subsequently framed. Section 4 did not prohibit the Government from granting leases until

rules were framed. 1957 Madh Pra 135 (138) [AIR V 44 C 58] (DB).

[4] The use of lime-stone can be for other purposes than lime-burning. Where a lease states that it is a mining lease concerning lime-stone only and it does not speak of lime-stone to be used for lime-burning nor is there anything to show that it was with reference to a minor mineral, the Mineral Concession Rules, 1949, will apply to it and such a lease cannot be said to be illegal as being contrary to the provisions of the Act and the Rules. 1956 S C 175 (176) [(S) AIR V 43 C 38].

[5] There is no statute or authority which disables a person in the position of a shrotrium-dar from granting any mineral concessions on his own account. Hence, mines in shrotrium villages should not be treated as mines where in the Government could grant mining rights in assertion of an exclusive right. 1956 Andh 81 (83) [AIR V 43 C 23] (DB).

[6] In respect of licenses or leases for mining operations which came into existence under the old Act, viz., Mines and Minerals (Regulation and Development) Act, LIII of 1948, prosecutions for non-observance of conditions or terms is not only illegal but impossible and for the same reason it is difficult to predicate that the provisions of S. 4 in both the Acts (Acts LIII of 1948 and LXVII of 1957) are analogous or could be said to have the same effect or to carry the same consequences, having regard especially to S. 9 of the old Act and S. 21 of the new Act. (‘60) 1960-2 Andh W R 36 (37).

**5. Power to make rules as respects mining leases.**

(1) The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup> for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any <sup>b</sup>[mineral oil] or in any area.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the manner in which, the <sup>c</sup>[mineral oils] or areas in respect of which and the persons by whom, applications for mining leases may be made and the fees to be paid on any such applications ;
- (b) the authority by which, the terms on which, and the conditions subject to which, mining leases may be granted ;
- (c) the maximum or minimum area and the period for which any mining lease may be granted, and the terms on which leases in respect of contiguous areas may be amalgamated ;
- (d) the fixing of the maximum and minimum rent payable by a lessee, whether the mine is worked or not.

[a] For Mineral Concession Rules, 1949, see Gaz. of Ind. 1949, Pt. I, p. 2075 and for Petroleum Concession Rules, 1949, see *ibid*, Extra., p. 2713. [b] Substituted for "mineral" by the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), S. 32 and Sch. III [w. e. f. 1-6-1958]. [c] Substituted for "minerals", *ibid*.

**Section 5 — Note 1**

[1] Rules 13 and 17 of the Mineral Concession Rules, 1949, and S. 5 of the Oilfields (Regulation and Development) Act, authorise the State to undertake the exploitation of mineral resources. 1959 Andh Pra 485 (487) [AIR V 46 C 138].

[2] Rule 32 of the Mineral Concession Rules, 1949, does not violate Art. 14 of the Constitution. 1956 Nag 101 (102) [AIR V 43 C 34] : ILR (1955) Nag 525 (DB).

[3] Rule 32 of the Mineral Concessions Rules confers no right on a person to apply for a lease. All that the person may be entitled to is to get a lease in certain circumstances but if no lease is granted it cannot be said that any fundamental right guaranteed by Art. 19 (1)(f) or (g) of the Constitution is infringed thereby. (1957) ILR (1957) Punj 39 (51, 55). (*Affirmed in AIR 1959 Punj 510*).

[4] Rule 37 does not apply to a transfer of a lease granted by a private person in case of land in which the minerals belong to him and not to Government. 1956 Pat 4 (6) [AIR V 43 C 2] : 34 Pat 746 (DB). (The Rule applies only to a transfer of the leased land by lessee from the State Government.)

[5] Rule 45 of the Mineral Concession Rules, 1949 in prescribing that mining lease should be granted only to a person holding a certificate of approval under R. 5 does not impose any unreasonable restriction on the ground that the Provincial Government possesses an uncontrolled and arbitrary power under R. 6 in the matter of granting a certificate. The power conferred by R. 6 is in no way uncontrolled or arbitrary because R. 7 prescribes the condition subject to which the power is to be exercised and R. 52 provides an appeal to the Central Government against the orders of the State Government. 1954 Pat 340 (344, 345) [AIR V 41 C 119] : 33 Pat 198 (DB).

[6] Rule 47 read with R. 41 imposes restrictions in the national interest for controlling

the price of basic materials needed for industrial development. Hence, unless those restrictions are shown to be unreasonable from a quantitative point of view, the Court will not declare them to be unreasonable and violative of the freedom guaranteed by Art. 19 (1) (f) of the Constitution from a qualitative standpoint. 1954 Pat 340 (345) [AIR V 41 C 119] : 33 Pat 198 (DB).

[7] Rule 48 provides that no mining lease or prospecting licence, or any right, title or interest therein, shall be transferred except to a person holding a certificate of approval from the State Government. This does not mean that the executing Court has no jurisdiction to sell such a property. It only indicates that at the time of the sale the executing Court will have to make it clear that only those persons could offer bids who had got a certificate of approval as required by Rule 48 of the Mineral Concession Rules, 1949. 1956 Pat 4 (6) [AIR V 43 C 2] : 34 Pat 746 (DB).

[8] The Mineral Concession Rules, 1949, came into force on 25-10-1949. These rules apply to all transfers of lease, or prospecting licence or mining lease, or their assignments, made after the date when these rules came into force irrespective of the fact whether the original lease itself was created before or after the date when the rules came into force. 1956 Pat 4 (6) [AIR V 43 C 2] : 34 Pat 746 (DB).

[9] The Central Government in reviewing an order under R. 59 acts merely as an administrative authority and it is not bound to adopt any procedure analogous to judicial proceedings. Hence, its decision does not become void and invalid because it did not give the parties any opportunity to put their case before it when making its order. 1959 Punj 54 (57, 58) [AIR V 46 C 16]. (The procedure laid down by Rr. 57 to 59 excludes the right of a petitioner for review to be heard in person as it implies that the State Government is not to be

(1) The Central Government may, by notification in the Official Gazette, make rules<sup>a</sup> for the conservation and development of <sup>b</sup>[mineral oils].

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

0 [ \* \* \* \* \* ]

- (c) the development of any <sup>d</sup>[mineral oil resources] in any area by prescribing or regulating the use of any engines, machinery or other equipment ;
- (d) the regulation of the drilling, redrilling, deepening, shutting down, plugging and abandoning of oilwells in an oilfield and for the limitation or prohibition of such operations and for the taking of remedial measures to prevent waste of or damage to oil ;

so heard.) + ('57) I L R (1957) Punj 39 (55).  
(Affirmed in AIR 1959 Punj 510.)

[11] The fact that R. 40 and R. 35, proviso 2, expressly refer to renewal of a lease does not mean that the other rules do not apply to the case of renewal of a lease. By necessary implication all the rules made for mining lease would also apply to the renewal of a lease, including the important rules, namely, R. 6 and R. 26. ('60) 38 Pat 1160 (1197, 1198) (DB).

[12] The second proviso to R. 6 imposes a condition precedent and the company which is not incorporated under the Indian Companies Act is not qualified for grant of a certificate of approval within the meaning of R. 6 of the Mineral Concession Rules. The bar against the companies is not absolute, (for the third proviso states that when it is so expedient in the public interest, the State Government may by order, with the previous approval of the Central Government, grant exemption from this rule. Even assuming that the Corporation registered under the English Companies Act, cannot be registered under the Indian Act (assuming that S. 253 of the Indian Act, 1913

[13] Section 4 (1) forbids grant of a mining lease after the commencement of the Act otherwise than in accordance with the rules made under the Act. Any mining lease granted contrary to the provisions of sub-section (1) would be void and of no effect. The Act 53 of 1948 and the Mineral Concession Rules were promulgated on the same date. On the question of interpretation, therefore the Courts have got to construe S. 4 of Act 53 of 1948 together with the R. 62 which has been made by the Central Government under S. 5 of the Act. 1953 S C J 373 : (1953) 1 M L J 743; AIR 1953 S C 252; (1871) 6 Ch. A C 875, *Hel. ou.* Rule 62 of the Mineral Concession Rules is a contemporaneous exposition to the effect that renewal of the pre-Act lease after the commencement of the Act is tantamount to a "grant of a lease" within the meaning of the expression in Ss. 4 and 5 of Act 53 of 1948. The language of S. 4 of Act 53 of 1948 is unqualified and absolute. There is no exception in favour of grants in pursuance of the earlier contracts. A lease granted in pursuance of an earlier contract of renewal comes within the mischief of Ss. 4 and 5 and also rule 26. The lease cannot be renewed unless the lessee holds a certificate of approval from the State Government. ('60) 38 Pat 1160 (1192, 1194) (DB).

[1] The Central Government, while deciding an application under R. 54, is acting in a quasi-judicial capacity. There is prima facie a lis in such a case as between the person to whom the lease has been granted and the person who is aggrieved by the refusal and therefore prima facie it is the duty of the authority which has to review the matter to act judicially and there is nothing in R. 54 to the contrary. As such it is incumbent upon it before coming to a decision to give a reasonable opportunity to the other party in the review application whose rights were being affected, to represent his case. 1960 S C 608 (609) [A I R V 47 C 94] : 1960-2 S C R 775 : ILR (1960) 2 Punj 43. (A I R 1959 Punj 510, Reversed.)



- (e) the regulation of the methods of producing oil in any oilfield, and the limitation or prohibition of such methods;
- (f) the compulsory notification of all new borings and shaft sinkings, and the preservation of boring records and specimens of cores of all new bore-holes ;
- (g) the taking of samples from mines and new bore-holes ;
- (h) the regulation of the arrangements for the storage of <sup>b</sup>[mineral oils] and the stocks thereof that may be kept by any person ;
- (i) the levy and collection of royalties, fees or taxes in respect of <sup>b</sup>[mineral oils] mined, quarried, excavated or collected ;
- (j) the submission by the owners or lessees of mines of special or periodical returns and reports, and the forms in which and the authorities to whom such returns and reports shall be submitted.

[a] For Minerals Conservation and Development Rules, 1955, see Gaz. of Ind. 1955, Pt. II, Sec. 3, p. 343. [b] Substituted for "minerals" by the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), S. 32 and Sch. III [w. e. f. 1-6.1958]. [c] Clauses (a) and (b) were omitted, *ibid.* [d] Substituted for "mineral resources", *ibid.*

## 7. Power to make rules for modification of existing leases.

(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of this Act so as to bring such lease into conformity with the rules made under sections 5 and 6 :

Provided that any rules so made which provide for the matters mentioned in clause (c) of sub-section (2) shall not come into force until they have been approved, either with or without modifications, by <sup>a</sup>[the House of the People].

(2) The rules made under sub-section (1) shall provide —

- (a) for giving previous notice of the modification or alteration proposed to be made thereunder to the lessee, and where the lessor is not the Central Government, also to the lessor, and for affording them an opportunity of showing cause against the proposal ;
- (b) for the payment of compensation by the party who would be benefited by the proposed modification or alteration to the party whose rights under the existing lease would thereby be adversely affected ; and
- (c) for the principles on which, the manner in which and the authority by which the said compensation shall be determined.

[a] Substituted, for "the Central Legislature", by A. L. O., 1950, [26-1-1950].

## 8. Delegation.

The Central Government may, by notification in the Official Gazette, direct that any power exercisable under this Act shall be exercised, subject to such conditions, if any, as may be specified therein by such officer or authority as may be specified in the direction.

## 9. Penalties.

(1) Any rule made under any of the provisions of this Act may provide that any contravention thereof shall be punishable with imprisonment which may

### Section 7 — Note 1

[1] It cannot be urged that where a mining lease has been granted before the Act and the Rules came into force, it is only the rules framed under S. 7 which will affect any sub-lease granted by the lessee even though the sub-lease is after the date on which the Act and the Rules came into force. 1960 S C 1373 (1375) [AIR V 47 C 250].

### Section 8 — Note 1

[1] Under R. 4 of the Mineral Concession Rules, 1949, made by the Central Government the authority to frame rules with respect to minor minerals has been delegated to State Governments. Hence the rules framed by the Rajasthan Government with respect to minor minerals are valid. (1958) 1 I L R (1958) 8 Raj 541 (543) (DB) + 1958 Raj 140 (142) [A I R V 45 C 44] : I L R (1958) 8 Raj 311.

extend to six months or with fine which may extend to one thousand rupees or with both.

(2) Whoever, after having been convicted of any offence referred to in sub-section (1), continues to commit such offence shall be punishable for each day after the date of the first conviction during which he continues so to offend, with fine which may extend to one hundred rupees.

### 10. Rules to be laid before the Legislature.

All rules made under any of the provisions of this Act shall be laid before \**[the House of the People]* as soon as may be after they are made.

[a] *Substituted* for "the Central Legislature", by A. L. O., 1950 [26-1-1950.]

### 11. Power of inspection.

(1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose mentioned in this Act or the rules made thereunder, any officer authorised by the Central Government in this behalf shall have the right to—

(a) enter and inspect any mine ;

(b) order the production of any document, book, register or record in the possession or power of any person having the control of or connected with, any mine ;

(c) examine any person having the control of, or connected with, any mine.

(2) Any officer authorised by the Central Government under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

### 12. Relaxation of rules in special cases.

The Central Government may, if satisfied that it is in the public interest so to do, authorise in any case the granting of any mining lease or the working of any mine on terms and conditions different from those laid down in the rules made under sections 5 and 6.

### \*[13. Act to be binding on the Government.

The provisions of this Act shall be binding on the Government.]

[a] *Substituted* for the former S. 13, by A. L. O., 1950 [26-1-1950].

### 14. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

## [THE INDIAN] OILSEEDS COMMITTEE ACT, 1946

(ACT IX of 1946)

[The Act printed here is as on 1-10-1960.]

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## ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Amended by Acts XL of 1949 ; III of 1951 ; LXVIII of 1952 ; LXII of 1956 , XL of 1960.
- Adapted by A. C. A. O., 1948 ; A. L. O., 1950 ; 3 A. L. O., 1956.
- Adapted by Andhra A. L. O., 1954.
- Extended by Acts LIX of 1949 ; XXX of 1950.

## [THE INDIAN] OILSEEDS COMMITTEE ACT, 1946

(ACT IX OF 1946)\*

[18th April, 1946.]

*An Act to provide for the creation of a fund to be expended by a Committee specially constituted for the improvement and development of the cultivation and marketing of oilseeds and of the production, manufacture and marketing of oilseed products.*

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the improvement and development of the cultivation and marketing of oilseeds and of the production, manufacture and marketing of oilseed products ;

It is hereby enacted as follows :—

[a] For Statement of Objects and Reasons, see Gazette of India, 1946, Part V, dated 26-1-1946 ; and for Report of the Select Committee, see *ibid*, page 131.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950], and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

## 1. Short title and extent.

(1) This Act may be called THE INDIAN OILSEEDS COMMITTEE ACT, 1946.

\*[(2) It extends to the whole of India :

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to the levy and collection of the duty of excise and the duty of customs specified therein.]

[a] Substituted for the former sub-section (2), by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), S. 2 and Schedule [1-11-1956].

## 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context—

- (a) "approved growers' association" means an association of growers approved by resolution of the Committee for the purposes of clause (g) of section 4 ;
- (b) "Collector" means the officer appointed by the Central Government to perform in any specified area the duties of a Collector under the provisions of this Act and the rules made thereunder, and includes any officer subordinate to that officer whom he may by order in writing authorize to perform his duties under those provisions ;
- (c) "the Committee" means the \*[Indian Central Oilseeds Committee] constituted under this Act ;
- (d) "Fund" means the Oilseeds Improvement Fund referred to in sub-section (2) of section 3 ;
- (e) "grower" means an agriculturist who grows oilseeds, with or without the aid of hired labour ;

<sup>b</sup>[(f) "mill" means any premises in which or in any part of which oilseeds are crushed or are ordinarily crushed with the aid of power ;

*Explanation.* — "Power" means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency ;]

(g) "oilseeds" does not include coconuts ;

(h) "prescribed" means prescribed by rules made under this Act.

[a] *Substituted* for "Indian Oilseeds Committee" by the Repealing and Amending Act, 1949 (XL of 1949), S. 3 and Schedule II [1-5-1949]. [b] *Substituted* for clause (f), by the Indian Oilseeds Committee (Amendment) Act, 1952 (LXVIII of 1952), S. 2 [w. e. f. 1-4-1953].

### 3. Imposition of oilseeds cess.

(1) There shall be levied and collected on and after the date of the commencement of this Act as cesses for the purposes of this Act,—

(a) on all oils extracted from oilseeds crushed in any mill in <sup>a</sup>[India], whether the oilseeds are produced in or imported from outside <sup>b</sup>[India], a duty of excise <sup>c</sup>[at the rate of seventeen naye paise per quintal], and

(b) on all oilseeds exported out of <sup>b</sup>[India] to a destination outside India, a duty of customs <sup>d</sup>[at the rate of thirty-three naye paise per quintal] ;

Provided that the Central Government may from time to time and after consulting the Committee fix by notification in the Official Gazette a lesser rate at which the duty of excise or duty of customs shall be levied and collected ;

Provided further that no such duty of customs shall be levied on any oilseeds exported under a contract for export entered into before the aforesaid date.

(2) On the last day of each month, or as soon thereafter as may be convenient, the proceeds of the duties recovered during that month shall, after deduction of the expenses, if any, of collection and recovery, be paid to the Committee and the Committee shall credit the said proceeds and any other monies received by it to a fund to be called the Oilseeds Improvement Fund.

[a] *Substituted* for "the territories to which this Act extends", by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), S. 2 and Sch. [1-11-1956] b] *Substituted* for "the said territories", *ibid.* [c] *Substituted* for "at the rate of one anna per maund", by the Customs Duties and Cesses (Conversion to Metric Units) Act, 1960 (XL of 1960), S. 7 [1-10-1960]. [d] *Substituted* for "at the rate of two annas per maund", *ibid.*

### 4. Constitution of Indian Oilseeds Committee.

As soon as may be after the commencement of this Act, the Central Government shall cause to be constituted a Committee consisting of the following members, to receive for credit to the Fund the proceeds of the duties and to administer the Fund, namely :—

<sup>a</sup>[(a) the Vice-President, Indian Council of Agricultural Research ;

(b) the Agricultural Commissioner with the Government of India ;

(c) the Agricultural Marketing Adviser with the Government of India ;

(d) two persons representing, respectively, the Ministry of Commerce and Industry and the Ministry of Food and Agriculture of the Central Government, to be appointed by the Central Government ;

<sup>b</sup>[(e) ten persons representing the Governments of Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Rajasthan, Uttar Pradesh and West Bengal, one each to be nominated by the State Government concerned ;]

(f) <sup>c</sup>[seventeen] persons being growers, who shall be nominated after consulting the approved growers' associations in the State, as follows :—

\* \* \* \* \*

(ii) three each by the Governments of Bombay and Uttar Pradesh,

•[(iii) two each by the Governments of Andhra Pradesh, Madras and Madhya Pradesh ;

(iv) one each by the Governments of Bihar, Punjab, West Bengal, Mysore and Rajasthan ;]

Provided that where there are for the time being no approved growers' associations concerned, the Government shall, before making any nomination under this clause, consult the associations of growers, or associations the majority of whose members are growers, if any, in the State concerned ;]

(h) one person having experience of the co-operative movement to be appointed by the Central Government ;

(i) one oilseed technologist to be nominated by the Oil Technologists Association, <sup>1</sup>[Kanpur] ;

(j) three persons representing the village oilseed crushing industry to be appointed by the Central Government after consulting <sup>2</sup>[State] Governments ;

(k) one person representing the vanaspati industry to be appointed by the Central Government after consulting the appropriate commercial associations ;

(l) two persons representing the power oilseed crushing industry to be appointed by the Central Government after consulting the appropriate commercial associations ;

(m) two persons representing exporters of oilseeds and oilseed products to be appointed by the Central Government after consulting the appropriate trade associations, other than those referred to in clauses <sup>3</sup>[(n) and (o)] ;

(n) one person representing the Federation of Indian Chambers of Commerce and Industry to be nominated by that body ;

(o) one person representing the Associated Chambers of Commerce to be nominated by that body ;

<sup>b</sup>[(p) \* \* \* \* \*]

(q) one person representing the Federation of Rural Peoples' Organisations to be nominated by that body ;

(r) four persons representing the oilseeds trade associations to be appointed by the Central Government after consulting the appropriate commercial associations, other than those referred to in clauses <sup>4</sup>[(m), (n) and (o)] ;

ii[(s) six persons representing consumers of oilseed products, of whom four shall be elected from among themselves by the members of the House of the People and two from among themselves by the members of the Council of States ;]

(t) such additional persons, not more than three in number, as the Central Government may appoint to represent interests not otherwise represented.

[a] Substituted for clauses (a) to (g), by the Indian Oilseeds Committee (Amendment) Act, 1952 (LXVIII of 1952), S. 3 [w. e. f. 1-4-1953]. [b] Substituted for the former clause (e), by 3 A. L. O., 1956 [w. r. e. f. 1-11-1956]. [c] Substituted for "twenty-one", *ibid.* [d] Sub-clause (i) of clause (f) was omitted by the Andhra (Adaptation of Laws on Union Subjects) Order, 1954. [e] Substituted for sub-cl. (iii) and (iv), by 3 A. L. O., 1956 [w. r. e. f. 1-11-1956]. [f] Substituted for "Cawnpore" by Act LXVIII of 1952, S. 3 [w. e. f. 1-4-1953]. [g] Substituted for "(n), (o) and (p)", *ibid.* [h] Clause (p) was omitted, *ibid.* [i] Substituted for "(m), (n), (o) and (p)", *ibid.* [j] Substituted for cl. (s), *ibid.*

**Note.**—The Indian Central Oil Seeds Committee, constituted under this section, consists of persons representing all the bodies or associations of persons interested in the improvement and development of the cultivation and marketing of oil-seeds and of the production, manufacture and marketing of oil-seed products.

## 5. Incorporation of the Committee.

The Committee shall be a body corporate by the name of the <sup>a</sup>[Indian Central Oilseeds Committee], having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable and to contract, and shall by the said name sue and be sued.

[a] *Substituted* for "Indian Oilseeds Committee", by the Repealing and Amending Act, 1949 (XL of 1949), S. 3 and Sch. II [1-5-1949].

## 6. Vacancies.

(1) If, within the period prescribed in this behalf, or within such further period as the Central Government may allow, any authority or body fails to make any nomination or election which it is entitled to make under section 4, the Central Government may itself appoint a member to fill the vacancy in the Committee.

(2) Where a member of the Committee dies, resigns or is removed, or ceases to reside in India or becomes incapable of acting, the Central Government may, on the recommendation of the authority or body which was entitled to make the first nomination or election under section 4, or where such recommendation is not made within a reasonable time, then on its own initiative, appoint a person to fill the vacancy.

(3) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Committee.

## 7. President of Committee, Secretary, sub-committees and staff.

<sup>a</sup>[(1) The Central Government may appoint any of the persons referred to in section 4 or any other person to be the President of the Committee, and if any other person is so appointed that other person shall be deemed to be a member of the Committee for all the purposes of this Act.]

(2) The Central Government shall appoint a person to be the Secretary of the Committee and such person shall be paid by the Committee such salary and such allowances as may be fixed by the Central Government.

(3) The Committee may appoint such sub-committees and staff as may be necessary for the efficient performance of its functions under this Act.

[a] *Substituted* for sub-section (1) by the Indian Oilseeds Committee (Amendment) Act, 1952 (LXVIII of 1952), S. 4 [w. e. f. 1-4-1953].

## 8. Appointment of officers.

The Central Government may, on the recommendation of the Committee, appoint an officer or officers, to discharge under the direction of the Committee such duties as may be prescribed, and such officer or officers shall be paid by the Committee such salary and allowances as may be fixed by the Central Government.

## 9. Application of Fund.

(1) The Committee shall apply the Fund to meet the expenses of the Committee and the cost of such measures as it may consider necessary or expedient to take for the improvement and development of the cultivation and marketing of oilseeds and of the production, utilisation and marketing of oilseed products.

(2) Without prejudice to the generality of the foregoing power, the Committee may utilise the Fund to defray expenditure involved in—

- (a) undertaking, assisting or encouraging agricultural, industrial, technological and economic research, including research into the food-value of oilseeds and oilseed products;
- (b) supplying technical advice to growers and millers;
- (c) encouraging the adoption of improved methods of cultivation and storage of oilseeds;

- (d) producing, testing and distributing improved varieties of oilseeds or assisting such work;
- (e) assisting in the control of insect and other pests and diseases of oilseeds both in the field and in storage;
- (f) promoting the improvement of the marketing of oilseeds and their products including the setting up and adoption of grade standards for oilseeds and their products;
- (g) collecting statistics from growers, dealers and millers on all relevant matters and promoting improvement in the forecasting of oilseed crops and the preparation of all relevant statistics relating to oilseeds and oilseed products;
- (h) maintaining, and assisting in the maintenance of, such institutes, farms and stations as it may consider necessary;
- (i) advising and providing assistance on all matters connected with the improvement of the cultivation of oilseeds (including advising on the best and most suitable varieties of oilseeds to be cultivated) and the improvement of the industries using oilseeds or their products;
- (j) promoting and encouraging the co-operative movement in the oilseeds industry;
- (k) adopting such measures as may be practicable for assuring remunerative returns to growers;
- (l) organising the establishment of growers', millers' and consumers' associations;
- (m) aiding and encouraging the establishment of exhibitions for demonstrating the uses of oilseeds and oilseed products;
- (n) adopting any other measures or performing any other duties which it may be required by the Central Government to adopt or perform or which the Committee may itself think necessary or advisable in order to carry out the purposes of this Act.

#### **10. Delivery of monthly returns.**

(1) The owner of every mill shall furnish to the Collector, on or before the 7th day of each month, a return stating the total amount of oils extracted in the mill during the preceding month, together with such further information in regard thereto as may be prescribed :

Provided that no return shall be required in regard to oils extracted before the commencement of this Act.

(2) Every such return shall be made in such form and shall be verified in such manner as may be prescribed.

#### **11. Collection of duty of excise.**

(1) On receiving any return made under section 10, the Collector shall assess the amount of the duty of excise payable under section 3 in respect of the period to which the return relates, and if the amount has not already been paid, shall cause a notice to be served, upon the owner of the mill requiring him to make payment of the amount assessed within thirty days of the service of the notice.

(2) If the owner of any mill fails to furnish in due time the return referred to in sub-section (1) of section 10 or furnishes a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount, if any, payable by him in such manner as may be prescribed, and the provisions of sub-section (1) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the owner :

Provided that, in the case of a return which he has reason to believe is incorrect or defective, the Collector shall not assess the duty of excise at an

amount higher than that at which it is assessable on the basis of the return without giving to the owner a reasonable opportunity of proving the correctness and completeness of the return.

(3) A notice under sub-section (1) may be served on the owner of a mill either by post or by delivering it or tendering it to the owner or his agent at the mill.

*Note.* — Any owner of a mill, if he is aggrieved by the order of assessment made under this section, may apply to the District Judge or in a Presidency Town to the Chief Judge of the Small Cause Court for cancellation or modification of the assessment, within three months of service of the notice referred to in sub-section (1). The decision of the District Judge or the Chief Judge of the Small Cause Court, as the case may be, shall be final. See next section.

## **12. Finality of assessment and recovery of unpaid duty of excise.**

(1) Any owner of a mill who is aggrieved by an assessment made under section 11 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the District Judge, or in a Presidency-town, to the Chief Judge of the Small Cause Court for the cancellation or modification of the assessment and, on such application, the said Judge may cancel or modify the assessment and order the refund to such owner of the whole or part, as the case may be, of any amount paid thereunder.

(2) The decision under sub-section (1) of the District Judge or the Chief Judge of the Small Cause Court, as the case may be, shall be final.

(3) Any sum recoverable under section 11 may be recovered as an arrear of land-revenue.

## **13. Power to inspect mills and take copies of records and accounts.**

(1) The Collector or any officer empowered by general or special order of the Central Government in this behalf shall have free access at all reasonable times during working hours to any mill or to any part of any mill.

(2) The Collector or any such officer may, at any time during working hours, with or without notice to the owner, examine the purchase, sale and stock records and accounts of any mill and take copies of or extracts from all or any of the said records or accounts for the purpose of testing the accuracy of any return or of informing himself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder :

Provided that nothing in this section shall be deemed to authorize the examination of any description or formulae of any trade process.

## **14. Information acquired to be confidential.**

(1) All such copies and extracts and all information acquired by a Collector or any other officer from an inspection of any mill or warehouse or from any return submitted under this Act shall be treated as confidential.

(2) If the Collector or any such officer discloses to any person other than a superior officer any such information as aforesaid without the previous sanction of the Central Government, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine :

Provided that nothing in this section shall apply to the disclosure of any such information for the purposes of a prosecution in respect of the making of a false return under this Act.

## **15. Keeping and auditing of accounts.**

(1) The Committee shall publish an annual report and shall keep accounts of all duty and other monies received by it under this Act and of the manner in which the Fund is expended and shall also publish a summary of the accounts along with the annual report.



(2) Such accounts shall be examined and audited annually in the prescribed manner, and the auditors shall have power to disallow any item which has been, in their opinion, expended otherwise than in pursuance of the purposes of this Act.

(3) If any item is disallowed, an appeal shall lie to the Central Government whose decision shall be final.

## 16. Dissolution of Committee.

The Central Government may, with the previous approval of '[\* \* \*]' [the House of the People], by notification in the Official Gazette, declare that, with effect from such date as may be specified in the notification, the Committee shall be dissolved, and on the making of such declaration all funds and other property vested in the Committee shall vest in '[\* \* \*]' the Central Government and this Act shall be deemed to have been repealed.

[a] The words "both Chambers of" were omitted by A. C. A. O., 1948 [23-3-1948].

[b] Substituted for "the Central Legislature", by A. L. O., 1950 [28-1-1950]. [c] The words "His Majesty for the purposes of" were omitted, *ibid*.

## 17. Power of the Central Government to make rules.

(1) The Central Government may, after previous publication, make 'rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) for prescribing the time within which nominations or elections shall be made under section 4 whether in the first instance or on the occurrence of vacancies ;
- (b) for prescribing the term of office of the members of the Committee ;
- (c) for prescribing the circumstances in which and the authority by which any member may be removed ;
- (d) for prescribing the quorum of the Committee ;
- (e) for the holding of a minimum number of meetings of the Committee during any year ;
- (f) for the maintenance by the Committee of a record of all business transacted and the submission of copies of such records to the Central Government ;
- (g) for the definition of the powers of the Committee to enter into contracts which shall be binding on the Committee, and the manner in which such contracts shall be executed ;
- (h) for the regulation of the travelling allowances of members of the Committee and of their remuneration, if any ;
- (i) for the definition of the powers of the Committee, in respect of the appointment, promotion and dismissal of officers and servants of the Committee, and in respect of the creation and abolition of appointments of such officers or servants ;
- (j) for the regulation of the grant of pay (which shall not, except in the case of a person having specialist's qualifications, exceed two thousand rupees per mensem) and leave to officers and servants of the Committee, and the payment of leave allowances to such officers and servants, and the remuneration to be paid to any person appointed to act for any officer or servant to whom leave is granted ;
- (k) for the regulation of the payment of pensions, gratuities, compassionate allowances and travelling allowances to officers and servants of the Committee ;

- (l) for prescribing the establishment and maintenance of a provident fund for the officers and servants of the Committee, and for the deduction of subscriptions to such provident fund from the pay and allowances of such officers and servants, other than Government servants whose services have been lent or transferred to the Committee ;
- (m) for prescribing the preparation of budget estimates of the annual receipts and expenditure of the Fund and of supplementary estimates of expenditure not included in the budget estimates, and the manner in which such estimates shall be sanctioned and published ;
- (n) for defining the powers of the Committee, the Standing Finance Sub-committee, if any, and the President, respectively, in regard to the expenditure from the Fund whether provision has or has not been made in the budget estimates or by re-appropriation for such expenditure, and in regard to the re-appropriation of estimated savings in the budget estimates of expenditure ;
- (o) for prescribing the maintenance of accounts of the receipts and expenditure of the Fund and providing for the audit of such accounts ;
- (p) for prescribing the manner in which payments are to be made by or on behalf of the Committee, and the officers by whom orders for making deposits or investments or for withdrawals or disposal of the funds of the Committee shall be signed ;
- (q) for determining the custody in which the current account of the Fund shall be kept, and the bank or banks at which surplus monies at the credit of the Fund may be deposited at interest, and the conditions on which such monies may be otherwise invested ;
- (r) for prescribing the preparation of a statement showing the sums allotted to Departments of Agriculture and Industries or institutions not under the direct control of the Committee for expenditure on research, the actual expenditure incurred, the outstanding liabilities, if any, and the disposal of unexpended balances at the end of the year ;
- (s) for prescribing the duties of the officers appointed under section 8, and the powers and duties of the Secretary of the Committee ;
- (t) for prescribing the manner in which any amount of duty paid in excess may be refunded ;
- (u) any other matter which is to be or may be prescribed.

[a] For the Indian Oilseeds Committee Rules, 1947, *see* Gaz. of Ind., 1948, Pt. I, p. 507.

### **18. Power of the Committee to make regulations.**

The Committee may, with the previous sanction of the Central Government, make regulations consistent with this Act and with any rules made under section 17 to provide for all or any of the following matters, namely :—

- (a) the appointment of a Standing Finance Sub-committee or other Sub-committee and the delegation thereto of any powers exercisable under this Act by the Committee ;
- (b) the method of appointment, removal and replacement and the term of office of members of the Sub-committees, and for the filling of vacancies therein ;
- (c) the dates, times and places for meetings of the Committee and the Sub-committees and the procedure to be observed at such meetings ;
- (d) the circumstances in which security may be demanded from officers and servants of the Committee, and the amount and nature of such security in each case ;
- (e) the times at which, and the circumstances in which, payments may be made out of the provident fund and the conditions on which such payments shall relieve the fund from further liability ;

- (f) the contribution, if any, payable from the funds of the Committee to the provident fund ;
- (g) generally all matters incidental to the provident fund and the investment thereof.

### 19. Publication of rules and regulations.

All rules made under section 17 and all regulations made under section 18 shall be published in the Gazette of India.

## [THE] OPIUM ACT, 1857

(ACT XIII of 1857)

[The Act printed here is as on 1-10-1960].

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- Amended by Acts I of 1911; XXVII of 1925; XXXIII of 1950; LXII of 1956.
- Amended in Uttar Pradesh by U. P. Act XII of 1922.
- Adapted by A.O. 1937; A.L.O., 1950.
- Short title given by Act I of 1903.
- Supplemented by Act I of 1911.
- Extended by Acts LIX of 1949; XXX of 1950.
- Extended in Madhya Pradesh by M. P. Act XII of 1950.
- Extended in Punjab by Punj. Act V of 1950.
- Repealed in part by Acts XIV of 1870; I of 1878; XII of 1891.
- Repealed in Assam by Act V of 1897.

## [THE] OPIUM ACT, 1857

(ACT XIII OF 1857)\*

[6th June, 1857.]

*An Act to consolidate and amend the law relating to the cultivation of the poppy and the manufacture of opium* <sup>b</sup>[\* \*].

## Preamble.

WHEREAS the existing law relating to the cultivation of the poppy and the manufacture of opium on account of Government is in some respects inconsistent with the practice which now obtains under agreement between the Opium Agents and the cultivators, and it is expedient that such inconsistency should be removed;

AND WHEREAS it is also expedient <sup>c</sup>[\* \* \*] that the laws for preventing the illicit cultivation of the poppy, and for regulating the cultivation of the poppy and the manufacture of opium on account of Government, should be consolidated and amended;

It is enacted as follows :—

[a] Short title to the Act was given by the Amending Act, 1903 (I of 1903), Sch. I.

This Act has been declared to be in force throughout the former Province of Bengal and the former North-Western Provinces except the Scheduled Districts by the Laws Local Extent Act, 1874 (XV of 1874), Ss. 6 and 7.

It has also been declared to be in force in the Santhal Parganas by Regulation III of 1872, S. 3 (1) and Sch. ; and in Oudh, subject to certain modifications, by the Oudh Laws Act, 1876 (XVIII of 1876), S. 3 (e) and Sch. II. Sections 21 to 23 and 25 to 29 of the Act have been declared to be in force in the C. P. by the C. P. Laws Act, 1875 (XX of 1875), S. 3 and Sch.

It has been declared by Notification under the Scheduled Districts Act, 1874 (XIV of 1874), S. 3, to be in force in :—

West Jalpaiguri in the Jalpaiguri District . . . see Gaz. of Ind. ; 1881, Pt. I, p. 74.

Kumaon, Garhwal, the Schedule portion of the Mirzapur District and the

Tarai Parganas . . . . . see Gaz. of Ind., 1879, Pt. I, p. 383.

The Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan and the Porahat Estate in the district of Singhbhum, in the Chota Nagpur Division . . . . . see Gaz. of Ind., 1881, Pt. I, p. 504.

The Act has been extended to the new provinces and Merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to States merged in the State of :—

Madhya Pradesh see M. P. Act XII of 1950, S. 3 [3-4-1950].

Punjab : see Punjab Act V of 1950, S. 3 [15-4-1950].

The validity of the Act is not affected by the Dangerous Drugs Act, 1930 (II of 1930), or by the rules made thereunder ; see S. 39 (2) of that Act.

[c] The words "in the Presidency of Fort William in Bengal" were omitted by the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950), S. 2 and Sch. [18-4-1950]. [c] The words "that certain obsolete Regulations relating to the provision of opium should be formally repealed and" were omitted by the Amending Act, 1891 (XII of 1891).

### \*[1. Short title and extent.

(1) This Act may be called THE OPIUM ACT, 1857.

(2) It extends to the whole of India b[\* \* \*].

[a] Inserted by the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950), S. 2 and Sch. [18-4-1950]. The original section 1 was omitted by Act XIV of 1870. [b] The words "except the State of Jammu and Kashmir" were omitted by the Jammu and Kashmir (Extension of Laws) Act, 1958 (LXII of 1958), S. 2 and Sch. [1-11-1958].

### 2. Prohibition of poppy cultivation and opium manufacture. [Repealed by the Opium Act, 1878 (I of 1878).]

### \*[3. Appointment of officers to superintend provision of opium.

(1) The a[Central Government], after consideration of any recommendation made in this behalf by the a[State Government] of the a[State] for which the appointment is to be made, may appoint Opium Agents to superintend the provision of opium for b[the Central Government].

(2) The a[Central Government] may appoint officers to assist the Opium Agents, under the designation of Deputy Agents, district opium officers, assistant opium officers, or such other designations as it may think fit and may delegate to the Opium Agents the power of appointing all or any of such officers.

(3) Unless the a[Central Government], after consideration of any recommendation made by the State Government in this behalf, otherwise directs, the Collector shall be Deputy Agent for his district.

(4) The a[Central Government] may by rule prescribe the powers and duties of officers appointed under this section.]

[a] Substituted for the original section by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch. [b] Substituted for "Government", by A. O., 1937 [1-4-1937].

### 4. Officers amenable to Civil Courts.

The Opium Agents, and their subordinate officers of every description, are declared amenable to the Civil Courts for all acts done by them in their official capacity, except as otherwise herein provided.

#### Bar of suit without previous application to agent for redress.

But no suit shall be instituted against an Agent, or any subordinate officer, for any act done in his official capacity, unless the person who shall consider himself aggrieved by the act of such Agent or officer shall have first made application for redress to the Agent himself.

In the event of such person not being satisfied with the order which the Agent may pass upon his application, it shall then be competent to him either to lay his case by petition before a[the Central Government], or at once to seek redress in the Civil Court.

[a] Substituted for "Government", by A. O., 1937 [1-4-1937].

### 5. Sanction to suit by Agent.

The Opium Agents shall not in their official capacity institute any suit in a Civil Court without the previous sanction of a[the Central Government].

[a] Substituted for "Government", by A. O., 1937 [1-4-1937].

### \*[6. Power of Central Government to appoint officer to conduct suits.

b[The Central Government] may take upon itself, or entrust to an officer specially appointed for the purpose, the superintendence of the prosecution or defence of any suit or appeal in which b[the Central Government] or an

Agent, or any other officer subordinate to <sup>b</sup>[the Central Government], may be engaged, instead of leaving such superintendence to the Agent or any other officer.]

[a] *Substituted* for the original section 6, by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch. [b] *Substituted* for "Government" by A. O., 1937 [1-4-1937].

## **7. Board to fix limits of cultivation and price to be paid to cultivators.**

<sup>a</sup>[ \* \* \* ] <sup>b</sup>[The Central Government] shall from time to time fix the limits within which licenses may be given for the cultivation of the poppy on account of <sup>b</sup>[the Central Government].

<sup>b</sup>[The Central Government] shall from time to time fix the price to be paid to the cultivators for the opium produced.

The price shall be fixed at a certain sum per seer of eighty *tolas* for opium of a certain standard consistence, and shall be subject to a rateable reduction according to a scale sanctioned by <sup>b</sup>[the Central Government], for opium of a consistence below the standard.

[a] The words "The Board of Revenue with the sanction of" were *omitted* by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch. [b] *Substituted* for "Government", by A. O., 1937 [1-4-1937].

## **8. Issue of licenses.**

The <sup>a</sup>[district opium officers] or other officers entrusted with the superintendence of the cultivation shall, at the proper period of the year, issue licenses to the cultivators who may choose to engage to cultivate the poppy and to deliver the produce to the officers of <sup>b</sup>[the Central Government] at the established rates.

### **What to be specified in license.**

Every license shall specify the number of *bighas* which the party engages and is authorized to cultivate, and shall be in such form as the Agent, with the sanction of <sup>b</sup>[the Central Government] may direct. A counterpart engagement, in conformity with the tenor of the license, shall be taken from the cultivator.

[a] *Substituted* for "Sub-Deputy Agents" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch. [b] *Substituted* for "Government", by A. O., 1937 [1-4-1937].

## **9. Cultivator to have option to engage to cultivate or not. Officers compelling cultivator to engage liable to be dismissed.**

It shall be at the option of every cultivator to enter into engagements for the cultivation of the poppy or not as he may think fit; and any <sup>a</sup>[district opium officer] or other officer as aforesaid, or any inferior officer employed in the provision of opium, who shall compel, or use any means to compel, any cultivator to enter into engagements, or to receive advances, for the cultivation of the poppy, shall be liable to be dismissed from his situation.

### **District opium officer may withhold license to cultivate.**

It shall be at the option of the <sup>a</sup>[district opium officer] or other officer as aforesaid to withhold a license from any cultivator whenever he may think proper so to do.

### **Appeal.**

Any person to whom a license has been refused may appeal to the Agent and the decision of the Agent shall be final.

[a] *Substituted* for "Sub-Deputy Agent" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch.

## **10. Penalty on cultivator receiving advances and not cultivating full quantity of land. Adjudication of penalty.**

If it shall be found that any cultivator who has received advances from the Government has not cultivated the full quantity of land for which he received such advances, he shall be liable to a penalty of three times the amount of the advances received for the land which he has failed to cultivate; and the said

penalty may be adjudged by the Deputy Agent or Collector, on the complaint of the <sup>a</sup>[district opium officer] or other officer as aforesaid.

### Appeal.

Any person dissatisfied with the judgment of the Deputy Agent or Collector may appeal to the Agent, and the decision of the Agent shall be final.

[a] *Substituted* for "Sub-Deputy Agent" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch.

### 11. Delivery of opium produced.

All opium the produce of land cultivated with poppy on account of <sup>a</sup>[the Central Government], shall be delivered by the cultivators to the <sup>b</sup>[district opium officers] or <sup>c</sup>[other officers duly authorized to receive such opium], or shall be brought by them to the *sadar* factory, as the Agent may direct.

Opium not liable to distress or attachment. Value thereof may be attached.

And no such opium shall be liable to be distrained or attached by *zamindar* or other proprietor, or a farmer of land, for the recovery of arrears of rent, or by any other creditor of a cultivator under any order or decree of Court, but the sum due to the cultivator on account of such opium may be attached by order of Court in the hands of the Agent or <sup>d</sup>[other] officer under the rules in force for such attachments.

[a] *Substituted* for "the Crown", by A. L. O., 1950 [26-1-1950]. [b] *Substituted* for "Sub-Deputy Agents" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch. [c] *Substituted* for "other district officers," *ibid.* [d] *Substituted* for "of the district," *ibid.*

### 12. Opium to be weighed and classified by district opium officer.

All opium delivered by the cultivators to the <sup>a</sup>[district opium officer] or <sup>b</sup>[other officer authorized as aforesaid] shall, before it is forwarded to the *sadar* factory, be weighed, examined and classified according to its quality and consistence by that officer, or his assistant if duly authorized by the Agent in that behalf, in the presence of the cultivators and in conformity with rules sanctioned by <sup>c</sup>[the Central Government].

### Proceeding where cultivator is dissatisfied with classification.

Any cultivator who may be dissatisfied with the classification of the <sup>d</sup>[receiving officer] shall be at liberty either to take his opium to the *sadar* factory, or to have it forwarded thither by such officer separate from the opium respecting which no dispute has arisen.

[a] *Substituted* for "Sub-Deputy Agent" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch. [b] *Substituted* for "other district officer," *ibid.* [c] *Substituted* for "Government" by A. O., 1937 [1-4-1937]. [d] *Substituted* for "district officer" by Act XXVII of 1925, S. 2 and Sch.

### 13. Weighing and examination at *sadar* factory.

All opium forwarded by the <sup>a</sup>[receiving] officers to the *sadar* factory, and all opium delivered at the *sadar* factory, by the cultivators, shall be there weighed and examined by the Opium Examiner or other officer duly authorized in that behalf, agreeably to rules sanctioned by <sup>b</sup>[the Central Government]; and the quality and consistence of the opium, and deductions from or additions (if any) to the standard price to be made in accordance with the said rules, shall be determined by the result of such examination.

The decision of the Examiner, or of the Agent in cases in which a reference to the Agent may be prescribed by the said rules, shall be final and conclusive, and not open to question in any Court.

[a] *Substituted* for "district" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch. [b] *Substituted* for "Government" by A. O., 1937 [1-4-1937].

**14. Confiscation of adulterated opium.**

When opium delivered by a cultivator, either to a \*[receiving] officer, or at the *sadar* factory, is suspected of being adulterated with any foreign substance it shall be immediately sealed up pending examination by the Opium Examiner, and notice of such intended examination shall be given to the cultivator.

**Adjudication of confiscation.**

If upon such examination the opium shall be found to be so adulterated, the Agent on the report of the Examiner may order that it be confiscated, and the order of the Agent shall be final and not open to question in any Court.

[a] Substituted for "district" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Sch.

**15. Weights and scales ;**

The weights and scales made use of in the *sadar* factories and at the district *kothis* shall be provided by \*[the Central Government].

**examination thereof.**

Every <sup>b</sup>[district opium officer] shall annually, before beginning to weigh the opium of the season, examine the weights and scales in use in his district and shall report the result of such examination to the Agent.

The Agent shall make a similar examination of the weights and scales of the *sadar* factory, and shall report the result to \*[the Central Government].

No weights or scales shall be made use of which on any such examination have not been found to be strictly accurate.

It shall be the duty of all officers who may superintend the weighing of opium to see that the opium is weighed fairly with an even beam ; and the practice of taking excess weight for the purpose of turning the scale, or as an allowance for dryage and wastage, is hereby prohibited.

[a] Substituted for "Government" by A. O., 1937 [1-4-1937]. [b] Substituted for "district officer", by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule.

**16. Adjustment of cultivators' accounts and recovery of balance by distress.**

The accounts of the cultivators shall be adjusted annually by the \*[district opium officers or other officers duly authorized in this behalf] as soon after the conclusion of the weighing and examination as possible ; and any balance that may remain due from any cultivator, or from any *mahto* or intermediate manager, may be recovered by the \*[adjusting officer] by distress and sale of the property of the defaulter or of his surety, in the same manner and under the same rules as the property of defaulting cultivators in estates held *khas* may be distrained and sold by the Collector for the recovery of an arrear of rent or revenue :

**Sanction to issue of warrant.**

Provided that no warrant of distress and sale shall be issued by any \*[adjusting officer] without the sanction of the Agent previously obtained.

[a] Substituted for "district officer" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule.

**17. Penalty on officer taking bribes.**

Any officer of the Opium Department who shall receive any fee, gratuity, perquisite or allowance, either in money or effects, under any pretence whatsoever, from any cultivator, or from any other person employed or concerned in the provision of opium, other than the authorized allowances of his situation, shall be dismissed from his office, and, on conviction before a Magistrate, shall be liable to a fine not exceeding five hundred rupees.

**18. Exactions by landholder from raiyat recoverable, together with penalty, in summary suit before Collector.**

If any zamindar or other proprietor of land, or any farmer of land shall exact from any *raiya*t on account of his poppy land any illegal cess or any



higher rate of rent than he is lawfully entitled to demand, the *raiyat*, or the \*[district opium officer] or \*[other officer duly authorized in this behalf], may institute a suit before the Collector, and recover from such proprietor or farmer the sum exacted by him in excess of his lawful demand, together with a penalty of treble the amount of such excess ; and such suit shall be tried according to the rules prescribed for suits instituted before a Collector relating to arrears or exactions of rent.

[a] *Substituted* for "Sub-Deputy Agent" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule. [b] *Substituted* for "other district officer on his behalf", *ibid*.

### 19. Penalty for embezzlement of opium by cultivator.

Any cultivator entering into engagements for the cultivation of the poppy on account of \*[the Central Government] who may embezzle, or otherwise illegally dispose of, any part of the opium produced shall be liable to a penalty not exceeding ten times the fixed price of the opium which he may be proved to have so disposed of, or to a fine not exceeding five hundred rupees if the amount of the said penalty be less than that sum, and the opium, if found, shall be liable to confiscation.

[a] *Substituted* for "Government", by A. O., 1937 [1-4-1937].

### 20. Penalty for illegal purchase of opium from cultivator ;

Any person purchasing or receiving any opium from a cultivator or other person who may have entered into engagements for the cultivation of the poppy, or who may be employed in the provision of opium on account of \*[the Central Government], or bargaining for the purchase of opium with such cultivator or person, or in any way causing or encouraging such cultivator or person to embezzle or illegally dispose of any opium,

and for illegal connivance at embezzlement by opium officer.

and any officer of the Opium Department conniving in any way at the embezzlement or illegal disposal of any opium,

shall be liable to a fine not exceeding one thousand rupees, unless the opium purchased, bargained for or illegally disposed of shall exceed the weight of thirty-one seers and a quarter, in which case the fine may be increased, at a rate not exceeding thirty-two rupees per seer for all such opium in excess of that weight ;

and the opium, if found, shall be liable to confiscation.

[a] *Substituted* for "Government", by A. O., 1937 [1-4-1937].

### 21. Penalty for unlicensed cultivation.

Any person who shall cultivate the poppy without license from a \*[district opium officer] or other officer duly authorized in that behalf, and any person who shall in any way cause, encourage or promote such illegal cultivation, shall be liable to a fine not exceeding five hundred rupees, unless the quantity of land so illegally cultivated shall exceed twenty bighas, in which case the fine may be at the rate of twenty five rupees per bigha ; and the poppy plants shall be destroyed, or, if any opium have been extracted from them, it shall be seized and confiscated.

If the opium shall have been extracted and shall not be seized, the offender shall be liable to a further fine not exceeding the rate of thirty-two rupees per bigha of land illegally cultivated.

[a] *Substituted* for "Sub-Deputy Agent", by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule.

### 22. Duty of landholder and others to give information of illegal cultivation.

All proprietors, farmers, *tahsildars*, *gumashias* and other managers of land shall give immediate information to the police or *abkari darogas*, or opium *gumashias*, or to the Magistrates, Collectors or officers in charge of the *abkari mahal*, or to the Agents, their deputies or \*[the district opium officers], of all

poppy which may be illegally cultivated within the estates or farms held or managed by them ; and every proprietor, farmer, *tahsildar*, *gumashta* or other manager of land, who shall knowingly neglect to give such information, shall be liable to the penalties for illegal cultivation prescribed in the last preceding section.

[a] Substituted for "Sub-Deputies" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule.

### 23. Duty of police and other officer to give information of illegal cultivation.

All police and *abkari darogas*, and opium *gumashtas*, and all <sup>a</sup>[\* \* \*] officers of the Government of whatever description, and all *chaukidars*, *paiks* and other village police-officers, shall give immediate information to the authority to which they are subordinate when it may come to their knowledge that any land has been illegally cultivated with poppy ; and such authority shall transmit the information to the <sup>b</sup>[district opium officer] or other officer superintending the cultivation of the poppy if in a district where the poppy is cultivated on account of <sup>c</sup>[the Central Government], or to the Collector or officer in charge of the *abkari mahal* if in a district where the poppy is not so cultivated.

Every police or *abkari daroga*, opium *gumashta*, <sup>a</sup>[\* \* \*] officer, *chaukidar* or other police-officer as aforesaid, who shall neglect to give such information, or shall in any respect connive at the illicit cultivation of the poppy, shall be liable to a fine not exceeding one thousand rupees if the offender be an officer of the Opium Department, or in any other case to a fine not exceeding five hundred rupees.

[a] The word "native" was omitted by A. L. O., 1950 [26-1-1950]. [b] Substituted for "Sub-Deputy Agent" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule. [c] Substituted for "Government" by A. O., 1937 [1-4-1937].

### 24. Police or *abkari daroga* how to proceed in case of illegal cultivation.

Whenever a police or *abkari daroga* or opium *gumashta* shall receive intelligence of any land within his jurisdiction having been illegally cultivated with poppy, he shall immediately proceed to the spot, and, if the information be correct, shall attach the crop so illegally cultivated, and report the same without delay to the authority to which he may be subordinate.

He shall at the same time take security from the cultivator of the said land for his appearance before the Magistrate ; and, in the event of such cultivator not giving the required security, he shall send him in custody to the Magistrate.

### 25. Landholders, etc., may attach in case of illegal cultivation.

Proprietors, farmers, *tahsildars*, *gumashtas* and other managers of land shall be at liberty to attach any poppy grown in opposition to the provisions of this Act in any estate or farm held or managed by them, and shall immediately report such attachment to the nearest police or *abkari daroga* or opium *gumashta*, who shall thereupon proceed in conformity with the rules contained in the last preceding section.

### 26. Adjudication of penalties.

Except as otherwise herein provided, all fines, penalties and confiscations prescribed by this Act shall be adjudged by the Magistrate on the information of the Deputy Agent or <sup>a</sup>[district opium officer] in districts in which the poppy is cultivated on account of <sup>b</sup>[the Central Government], and in other districts on the information of the Collector or officer in charge of the *abkari mahal* :

Provided that no information of an offence against this Act shall be admitted unless it be preferred within the period of one year after the commission of the offence to which the information refers.

[a] Substituted for "Sub-Deputy Agent" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule. [b] Substituted for "Government" A. O., 1937 [1-4-1937].

**27. Imprisonment in default of payment of fine.**

When any person is sentenced to pay any fine or penalty under this Act, such person, in default of payment of the same, may be imprisoned by order of the Magistrate for any time not exceeding six months or until the fine is sooner paid.

**28. Punishment for repetition of offences.**

Whenever any person shall be convicted of an offence against this Act after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment, which may be inflicted for a first offence, upon every subsequent conviction after the second.

**29. Place of imprisonment under section 28.**

Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any fine or penalty prescribed by this Act, unless such person be an officer of the Government or a village police-officer convicted of an offence under section 17, 20 or 23, shall be imprisoned in the civil jail.

**30. Disposal of fines and forfeitures.**

One-half of all fines and penalties levied from persons convicted of offences under sections 19, 20 and 21 of this Act, together with a reward of one rupee eight annas for each seer of opium confiscated and declared by the Civil Surgeon to be fit for use, shall, upon adjudication of the case, be awarded to the officer or officers who apprehended the offender, and the other half of such fines and forfeitures, together with a reward of one rupee eight annas for each seer of opium confiscated as aforesaid, shall be given to the informer.

If in any case the fine or penalty is not realized, the \*[Opium Agent] may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to <sup>b</sup>[him] fit.

[a] Substituted for "Board of Revenue" by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule. [b] Substituted for "them", *ibid*.

**31. Central Government may allow free cultivation of poppy and manufacture of opium in any district.**

The Central Government may authorize, by an order \*[\* \* \*] the cultivation of the poppy and the manufacture of opium in any district or districts without license from a <sup>b</sup>[district opium officer] or other officer of the Government; and, when such order has been published, all the provisions of this Act shall cease to have effect in such district or districts:

**Power to prescribe rules for delivery to Government officers.**

Provided always that <sup>c</sup>[the Central Government] may prescribe rules for the delivery of the opium so produced to officers of the Government appointed to receive it; and, when such rules have been passed, any cultivator or other person engaged in the cultivation of the poppy and manufacture of opium who shall dispose of any opium otherwise than is allowed by such rules, and any person who shall purchase or receive any such opium in contravention of the said rules, shall be subject to the penalties prescribed in section 19 of this Act; and such penalties may be adjudged by a Magistrate on the information of any officer of the Government or of any other person.

[a] The words "of Government" were omitted by A. O., 1937 [1-4-1937]. [b] Substituted for "Sub-Deputy Opium Agent", by the Opium (Amendment) Act, 1925 (XXVII of 1925), S. 2 and Schedule. [c] Substituted for "the Government" by A. O., 1937 [1-4-1937].

**32. Meaning of "Government". [Repealed by A. O., 1937.]**

# [THE] OPIUM ACT, 1878

## (ACT I of 1878)

[The Act printed here is as on 1-10-1960]

### C O N T E N T S

#### PREAMBLE

#### SECTIONS

1. Short title.  
Local extent.
2. [*Repealed.*]
3. Interpretation-clause.
4. Prohibition of poppy cultivation and possession, etc., of opium.
5. Power to make rules to permit such matters.
6. [*Repealed.*]
7. Warehousing opium.
8. Power to make rules relating to warehouses.
9. Penalty for illegal cultivation of poppy, etc.
10. Presumption in prosecutions under section 9.
11. Confiscation of opium.
12. Order of confiscation by whom to be made.
13. Power to make rules regarding disposal of things confiscated, and rewards.

14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

15. Power to seize opium in open places.

Power to detain, search and arrest.

16. Searches how made.

17. Officers to assist each other.

18. Vexatious entries, searches, seizures and arrests.

19. Issue of warrants.

20. Disposal of person arrested or thing seized.

21. Report of arrests and seizures.

22. [*Repealed.*]

23. Recovery of arrears of fees, duties, etc.

24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.

25. Recovery of penalties due under bond.

*SCHEDULE.*—[*Repealed.*]

### STATEMENT OF OBJECTS AND REASONS

"The present Bill has the following objects: first to enable the Governor-General in Council to bring the Opium Act, 1878, into force in such local areas and at such respective dates as he thinks fit; secondly, to remove the doubts as to whether sections 4 and 5 of that Act admitted of the free export and import of

opium, when thought desirable; thirdly, to permit and regulate, by rules framed under that Act, section 8, the form of opium-duties and to facilitate the recovery of their dues by farmers; lastly, to correct a clerical error in section 22 of the same Act."—Gazette of India, 1877, part V, page 645.

### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts II of 1930; LII of 1957.

—Adapted by A. O. 1937; A. L. O. 1950.

—Amended in its application to—

(a) Assam by Assam Act I of 1933;

(b) Bengal by Bengal Act V of 1933;

(c) Bombay by Bombay Acts II of 1923, XIV of 1930, XI of 1934, XVII of 1945 and XXVI of 1947.

(d) C. P. by C. P. Act I of 1929;

(e) Madhya Pradesh by M. B. Act XV of 1955; M. P. Act XXIII of 1958.

(f) Madras by Madras Acts XXXIV of 1947; XXXII of 1951.

(g) Orissa by Orissa Act II of 1939; and

(h) Punjab by Punjab Act III of 1925.

—Extended and amended by Act XXXIII of 1950.

—Extended by Acts LIX of 1949; XXX of 1950.

—Extended in Madhya Pradesh by M. P. Act XII of 1950.

—Extended in Madras by Mad. Act XXXV of 1949.

—Extended in Punjab by Punj. Act V of 1950.

—Repealed in part and amended by Acts XII of 1891 and XXXVIII of 1920;

—Repealed in part by Act IV of 1894.

—Repealed in the pre-Reorganisation State of Bombay (excluding the transferred territories) by Bom. Act LXIII of 1959.

—Repealed in other areas of Bombay: *see* Bom. Act XXV of 1949 as amended by Bom. Act XII of 1959.

**[THE] OPIUM ACT, 1878**  
**(ACT I OF 1878)\***

[9th January, 1878.]

*An Act to amend the law relating to opium.*

**Preamble**

**WHEREAS** it is expedient to amend the law relating to opium; it is hereby enacted as follows :

[a] For Statement of Objects and Reasons, *see* Gaz. of Ind., 1877, Pt. V, p. 645.

The Act has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), S. 3; in the Khondmals District by the Khondmals Laws Regulation, 1938 (IV of 1938), S. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1938 (V of 1938), S. 3 and Sch.

This Act has been extended to the new Provinces and the merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1-1-1950] and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16-4-1950].

It has also been extended to States merged in the State of —

Madhya Pradesh, by M. P. Act XII of 1950, S. 3 [3-4-1950].

Madras, by Mad. Act XXXV of 1949, S. 3 [1-1-1950].

Orissa by Ori. Act IV of 1950, S. 4 [3-3-1950].

Punjab, by Punj. Act V of 1950, S. 3 [15-4-1950].

The Act in its application to the Pre-Reorganisation State of Bombay (excluding the transferred territories) has been repealed in whole, *see* Bombay Repealing and Amending Act, 1959 (Bom. Act LXIII of 1959). As to repeal of this Act in the other areas of the State of Bombay, *see* Bom. Act XXV of 1949 as amended by Bom. Act XII of 1959.

**1. Short title.**

This Act may be called **THE OPIUM ACT, 1878.**

**Local extent.**

\*[It extends to the whole of India except the State of Jammu and Kashmir.]

[a] *Substituted* for the previous clause by the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950), S. 2 and Sch. [18-4-1950]. By S. 2 of this Act all the rules and orders made under this Act which were in force immediately before the commencement of this Act in certain parts of India, were extended to, and would be in force in, the rest of India except the State of Jammu and Kashmir. And further by S. 4 any law corresponding to this Act in force in any Part B State, other than Jammu and Kashmir, or in the merged territory of Cooh Behar was repealed, subject to a saving clause.

**2. Repeal and amendment of enactments.** [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891), and the Amending Act, 1894 (IV of 1894)*]

**Preamble — Note 1**

[1] Apart from providing that the offences under the Opium Act are to be investigated, inquired into and tried in accordance with the provisions of the Cr. P. Code, the Act neither lays down any scheme of procedure for their investigation and trial under the Act, nor is there any section in the Act prohibiting a Magistrate from taking cognizance of any offence under the Act except on a charge-sheet presented by the Police in accordance with the provisions of the Cr. P. Code. Therefore where a Superintendent of Customs and Excise files a charge-sheet on the basis of an investigation by the Police and it is accepted by the Magistrate, the irregularity is curable under S. 537, Cr. P. Code and the whole trial cannot be said to have been vitiated. 1952 Madh-B 17 (21) [AIR V 39]; 1952 Cri L Jour 246.

**Section 1 — Note 1**

[1] The provisions of the Abkari and Opium Act. are not intended merely to protect the public revenue and the provisions contained therein are based on public policy. (12) 35 Mad 582 (586) (DB).

[2] For complaints under the Abkari Act or under the Opium Act (1 of 1878), the ordinary Criminal Procedure Code, is not applicable, but the procedure contained in those Acts is to be strictly followed; and as complaints by private persons are not provided for by the procedure in those Acts, they must be treated as not properly instituted. 1929 Mad 604 (605) [AIR V 16]; 52 Mad 613; 30 Cri L Jour 1011.

[3] A police officer may be authorized to investigate non-cognizable cases under the Opium Act. But this power of investigation does not necessarily bring the investigation itself under Ch. 14, Cr. P. C. 1942 Cal 593 (597) [AIR V 29]; ILR (1942) 1 Cal 436; 44 Cri L Jour 145 (DB).

**3. Interpretation-clause.**

In this Act, unless there be something repugnant in the subject or context, —  
<sup>a</sup>["opium" means—

- <sup>b</sup>[(i) the capsules of the poppy (*papaver somniferum* L.), whether in their original form or cut, crushed or powdered, and whether or not juice has been extracted therefrom;]
- (ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and
- (iii) any mixture, with or without neutral materials, of any of the above forms of opium,

but does not include any preparation containing not more than 0·2 per cent. of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930;]

<sup>c</sup>"Magistrate" means, in the presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the State Government to try cases under this Act) a Magistrate of the second class ;

<sup>d</sup>["customs frontiers" means any of the customs frontiers of India as defined by the Central Government under section 3A of the Sea Customs Act, 1878;

**SECTION 3 — SYNOPSIS**

1. Opium.
2. Magistrate.
3. Import.
4. Transport.

1. Opium.—[1] Opium as defined in S. 3 does not include opium prepared or in course of preparation such as beinsi and beinchi. Hence a person in possession of both beinsi and beinchi is not guilty under S. 9, Opium Act, but is guilty under S. 10 (b), Dangerous Drugs Act. 1933 Rang 258 (258) [AIR V 20] : 11 Rang 436 : 34 Cri L Jour 1085 (DB).

[2] Pyaungchi and opium refuse are not opium within the meaning of S. 3, Opium Act as amended by Sch. 2, Dangerous Drugs Act. They now come within the definition of 'prepared opium' under S. 2 (f) (ii), Dangerous Drugs Act and possession of prepared opium in contravention of S. 4 (b) of that Act is punishable under S. 10 (b) of that Act and not under S. 9 (a) of Opium Act. 1937 Rang 346 (347) [AIR V 24] : 38 Cri L Jour 1092.

[3] Morphia is an alkaloid prepared from the poppy and is an intoxicating drug and comes within the definition of S. 3 of Opium Act. 1922 Lah 216 (217) [A I R V 9] : 3 Lah 230 : 23 Cri L Jour 580 (DB).

[But see 1920 Lah 263 (263) [A I R V 7] : 1 Lah 443 : 22 Cri L Jour 8].

[4] The substance called Bondika Bhusa which consists of the shells of poppy heads possesses in some measure the active properties of opium and can be used as intoxicant. It therefore comes within the definition of opium. The capsules in the definition include shells of the capsules and preparations of them, as they are parts of the capsule. 1936 Nag 240 (241) [AIR V 23] : I L R (1937) Nag 141 : 38 Cri L Jour 371.

[But see 1956 Punj 159 (160) [A I R V 43 C 58] : I L R (1956) Punj 416 : 1956 Cri L Jour 917 (DB).]

[5] The word "preparation" designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used. The word "admixture" refers only to a completed article and can only be applied after the mixing has been finished, and not earlier. The articles designated by both words only come within the scope of their respective definitions when they have been prepared or mixed as the case may be. 1924 Lah 99 (101) [AIR V 11] : 4 Lah 12 : 24 Cri L Jour 668.

[6] Opium in the form of coagulated juice of poppy is so well known in this country being widely used for medicinal and other purposes that any one can identify it and it is unnecessary to call in an expert to establish its identity. If an Excise Inspector says that certain article is crude opium his testimony cannot be looked upon as merely an opinion of an expert and is entitled to weight as evidence even if no reasons are given for the opinion. 1952 All 118 (118) [AIR V 39] : 1952 Cri L Jour 288 (DB) \* 1952 Ajmer 45 (1) (45) (1) [AIR V 39] : 1952 Cri L Jour 1386.

[7] The possession of poppy heads from which the opium had already been extracted cannot possibly be intended to be unlawful. 1958 Punj 77 (78) [A I R V 45 C 22] : I L R (1957) Punj 1371 : 1958 Cri L Jour 418 (1).

[8] Where the Excise Inspector, a witness and the accused himself stated that the commodity seized from the possession of the accused was contraband opium, it was held that the commodity must be considered to be opium and need not be sent for chemical analysis. (56) 1956 Raj L W 54 (56).

[9] Where the Excise Inspector was not able to say whether the article seized from the possession of the accused was opium within the meaning of S. 3 but simply stated that the article was opium it was held that the article need not be considered as opium in

"import" and "export", means respectively to bring into, or take out of, a State otherwise than across any customs frontiers;

"transport" means to remove from one place to another within the same State;

"sale" does not include sale for export across customs frontiers, and "sell" shall be construed accordingly.]

[a] *Substituted* for the original definition by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II. [b] *Substituted* for clause (1), by the Opium Laws (Amendment) Act, 1957 (LII of 1957), S. 2 [21-12-1957]. [c] *Cf.* definition in sub-section (2) of S. 3 of the Code of Criminal Procedure. [d] *Substituted* for the former definitions of "import", "export", "transport" and "sale", by the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950), S. 2 (2) and Sch. [18-4-1950].

#### 4. Prohibition of poppy cultivation and possession, etc., of opium.

Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

\* \* \* \* \*

<sup>a</sup>[(a)] possess opium;

<sup>a</sup>[(b)] transport opium;

<sup>a</sup>[(c)] import or export opium; or

<sup>a</sup>[(d)] sell opium.

[a] Sub-clauses (a) and (b), relating to the cultivation of the poppy and the manufacture of opium, were *omitted* and the subsequent sub-clauses relettered, by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II.

#### Section 3,— Note 1 (*contd.*)

the absence of chemical analysis. ('57) 1957 Cri L Jour 237 (238) (Raj).

2. **Magistrate.**—[1] The word 'specially' in S. 3 of the Act, is used in speaking of individuals and in contrast with the word 'generally.' When by a notification of the Government a class of officials is invested with power to try certain offence, such officials are only 'generally empowered.' Per *Seshagiri Aiyar J.* — Notification empowering all 2nd Class Magistrates to try all offences under the Opium Act is ultra vires of the powers given by the Act, as its effect is to enlarge the definition of Magistrate as given therein. 1915 Mad 1159 (1160) [A I R V 2] : 16 Cri L Jour 268 (DB).

[2] Notification of Government published in the Fort St. George Gazette under date 4th June, 1915 empowered the Second Class Magistrates mentioned in the list appended to the Notification to try cases under the Opium Act. This is a special empowering within the meaning of S. 39, Cr. P. C. 1924 Mad 256 (256) [A I R V 11] : 24 Cri L Jour 846 (DB).

3. **Import.**—[1] The offence of importing opium is an offence constituted by bringing it into the territory in question. It does not matter where it was before, provided it was outside the province. The offence is in bringing it in. If the goods once come across the border of the territory in question, if they come for and on account of the accused, with his consent, let alone by his procurement, the offence of importing is complete. It is not necessary to show that the accused did anything outside the territory. 1932 Cal 465 (466) [A I R V 19] : 59 Cal 1085 : 35 Cri L Jour 267 (DB).

4. **Transport.**—[1] A person having a licence for the possession of opium as a Medical practitioner limited to 8 palams of opium sent his servant to Sholavaram in the Ponnertaluk of Chingleput district to buy 4 palams of opium from a licensed vendor of opium and bring to Madras—*Held*, S. 3, absolutely prohibits transport of opium which is defined to mean the moving it from one place to another, except in the manner prescribed by the Act. By sending the servant to bring opium from Sholavaram to Madras the person was clearly transporting opium within the meaning of the Act. ('90) 13 Mad 191 (192) (DB).

[2] A licensed cultivator of opium took opium from Hoshiarpur to the Jalandur District where he sold it, to a retail vendor—*Held* that in taking opium from one district to another the cultivator must necessarily have transported it within the definition in S. 3. ('84) 1884 Pun Re (Cri) No. 13, p. 17 (8) (DB).

#### Section 4 — Note 1

[1] A person in possession of both beinsi and beinchi is not guilty under S. 9 but is guilty under S. 10 (b), Dangerous Drugs Act. 1933 Rang 258 (258) [A I R V 20] : 11 Rang 436 : 34 Cri L Jour 1085 (DB).

[2] It cannot be said that when possession is on behalf of another it is not possession within the meaning of the Opium Act. The offence consists in the possession of an amount beyond the prescribed amount without reference to any question as to any alleged proprietary right to any portion of the opium. ('05) 1 Weir 832 (833) (DB).

[3] Under S. 4 the possession of opium was prohibited except as permitted. Where the



### 5. Power to make rules to permit such matters.

The <sup>a</sup>[State Government] <sup>b</sup>[\* \* \*] may, from time to time, by notification in the Official Gazette, make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

<sup>b</sup>[\* \* \* \* \*]  
<sup>b</sup>[(a)] the possession of opium;

#### Section 4 — Note 1 (contd.)

accused was charged of being in illicit possession of opium, *Held* it was for the accused to establish, when his possession was found that it came within the exception and that the possession was permitted by the rules made under the Act. ('87) 1887 Pun Re (Cr) No. 8 p. 11 (13, 14) (DB).

[4] A person had a license from Collector under R. VI of the Rules framed by the Local Government under the Act for possession of opium as medical practitioner limited to 8 palams of opium. He sent his servant to buy from a licensed dealer at Sholavaram and bring to Madras 4 palams of opium—*Held*, that by sending his servant to bring opium from Sholavaram to Madras the person was clearly transporting opium within the meaning of the Act. Such transport was illegal since the Act prohibits the transport of opium unless it conforms to Rules VIII to XIII. ('90) 13 Mad 191 (192) (DB).

[5] A was licensed vendor of drugs in the town of Mazaffargarh. He asked B who was a wholesale contractor of drugs in the Multan district to send poppy heads. B obtained Rowana from the Collector of Multan district and sent the poppy heads. A was prosecuted for having contravened R. 24 of the Rules framed under the Opium Act as the poppy heads were transported without the permission of the Collector of Mazaffargarh—*Held* that the conviction could not be supported as there was no ground for finding that A authorised B to transport the poppy heads otherwise than in accordance with law and the rules in force. ('87) 1887 Pun Re (Cr) No. 40, p. 92 (93) (DB).

[6] A licensed cultivator of opium took opium from Hoshiarpur to Jalandur district where he sold it to a retail vendor—*Held* that in taking opium from one district to another the cultivator must necessarily have transported the opium and as under the rules only a farmer, a licensed vendor or a wholesale licensed vendor could transport opium, the cultivator was liable to punishment under S. 9. ('84) 1884 Pun Re (Cr) No. 13, p. 17 (18) (DB).

[7] The farmer of opium monopoly for retail vending of opium leased to another a shop for the retail sale of opium and other drugs to be supplied by the farmer—*Held*, the other person could not lawfully carry on the retail sale of opium without a license from the farmer. The agreement entered into between the parties was not equivalent to a license. ('81) 1881 Pun Re No. 114, p. 263 (265) (DB).

[8] Where the plaintiff, who was the farmer of the monopoly of the sale of drugs, entered

into an agreement with the defendant whereby the latter as his servant or agent was to sell drugs supplied to him by the plaintiff and hand over the proceeds of the sales to the plaintiff after deducting one anna per rupee as his remuneration for his services—*Held* that the agreement was not illegal there being nothing in the Act or the rules framed thereunder to say that a farmer may not appoint an agent or servant to act for him in the sale of drugs, and the defendant could legally receive, and retain possession of the drugs without any license from the plaintiff. ('83) 1883 Pun Re No. 105, p. 328 (330) (DB).

[9] A and B who had obtained a license for the vend of opium from the Collector admitted C as a partner without the Collector's sanction and though the conditions of the license prohibited A, B from transferring or sub-letting the privilege held, that the combined effect of Ss. 4, 5 and 9 of the Opium Act was to nullify a transfer made in violation of the provisions of the conditions of the license and C acquired no rights enforceable in law under it and that C's partnership with A, B was a transfer of the right of sale under the conditions of the license. ('12) 35 Mad 582 (584) (DB).

[10] A sale of opium of more than 2 tolas to a single person in contravention of the terms of a license is a breach of R. 48 and is punishable under S. 9 of the Act. 1920 Lah 405 (406) [AIR V 7] : 1919 Pun Re (Cri) No. 33 : 21 Cri L Jour 180.

[11] The section in prohibiting transport of opium contrary to the provisions of the Act does not imply that in the case of a breach of that prohibition there can never be a breach of the prohibition relating to possession. Hence where a person is both in possession of the opium and is also transporting it in contravention of the Act he is liable not only for the transportation of it but also for the possession of it. 1958 S C 935 (936) [AIR V 45 C 131] : 1959 S C R 1162 : 1958 Cri L Jour 1432. (Hence his separate conviction under cls. (a) and (b) of S. 9 is valid.)

[12] Since possession without restriction of incised capsules of poppy from which juice has been extracted is permitted by the rules framed under the Dangerous Drugs Act such possession is not prohibited by S. 4 of this Act. 1957 Orissa 93 (95) [AIR V 44 C 28] : ILR (1957) Cut 128 : 1957 Cri L Jour 527.

#### Section 5 — Note 1

[1] If it is proved that a person is in possession on behalf of others as also of himself of opium the total quantity of which is less than all the joint owners are entitled to possess he would not be guilty of any offence. 1930 Lah 342 (344) [AIR V 17] : 31 Cri L Jour 240.



<sup>b</sup>[(b)] the transport of opium;

<sup>b</sup>[(c)] the importation or exportation of opium; and

<sup>b</sup>[(d)] the sale of opium and the form of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule or any opium imported and on which a duty is imposed by or under the law relating to sea-customs<sup>e</sup> for the time being in force or under <sup>d</sup>[the Dangerous Drugs Act, 1930].

[a] The words "subject to the control of the Governor-General-in-Council" were *omitted* by A. O., 1937 [1-4-1937]. [b] Sub-clauses (a) and (b), relating to the cultivation of the poppy and the manufacture of opium, were *omitted*, and the subsequent sub-clauses re-lettered, by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II. [c] See the Sea Customs Act, 1878 (VIII of 1878), Chapter VIII. [d] *Substituted* for "section 6" by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II.

#### STATE AMENDMENTS

##### MADHYA PRADESH

In clause (a) of section 5 after the word "possession" *insert* the words "or use".

—M. B. Act XV of 1955, S. 2 [17-6-1955] read with M. P. Act XXIII of 1958.

##### WEST BENGAL

For clause (d) the following clause shall be *substituted* namely :—

"(d) the sale of opium and the form of taxation leviable on such sale."

—Beng. Act V of 1955, S. 3 (2).

#### Section 5 — Note 1 (contd.)

[2] Accused charged of being in possession of opium exceeding 3 tolas — Defence that there were other persons in the house who also consumed opium—*Held*, it lies upon the accused to prove that he was in possession of opium on behalf of other persons living in the house with him. ('05) 1905 Pun Re (Cr) No. 34, p. 72 (73) (DB)\*('02) 1902 Pun Re (Cr) No. 31, p. 82 (83)\*('97) 1897 Pun Re (Cr) No. 13, p. 33 (34) (DB).

[3] Under the amended R. 38 (2) of the Rules framed under the Opium Act the amount of chandu which two or more persons may without license at one time have in their possession is limited to 1 tola. This amendment has rendered unnecessary a decision on the conflict of the rulings reported in 1897 Pun Re (Cr) No. 13 and 1901 Pun Re (Cr) No. 10. 1918 Lah 216 (217) [AIR V 51 : 1918 Pun Re (Cr) No. 15 : 19 Cri L Jour 686 (DB)].

[4] A and B purchased  $\frac{1}{2}$  tola of opium each and B left his share near A and went to fetch water. *Held*, that A could not under the circumstances be held to have been in possession of B's share of the opium and could not be convicted under S. 9. ('29) 30 Cri L Jour 727 (727) (Nag).

[5] Rule 16 framed under S. 5 permits possession of either opium not exceeding 3 tolas or intoxicating drugs not exceeding 3 tolas or of both not exceeding 3 tolas in the aggregate. A person found in possession of  $2\frac{1}{2}$  tolas of opium and  $2\frac{1}{2}$  tolas of chandu not manufactured for domestic use held properly convicted of being in possession of opium and chandu in contravention of the rule. ('90) 1890 Pun Re (Cr) No. 22, p. 49 (54).

[6] Rule 4 (iii) (c) of the Rules framed by the Bombay Government under S. 5 is a rule of evidence as to the fact of possession and not a rule as to the conditions of possession as contemplated by S. 5 and as such is ultra vires of the section. Therefore a conviction based on the rule is illegal. 1914 Sind 124 (125) [AIR V 1] : 8 Sind L R 138: 16 Cri L Jour 136.

[7] A licensed cultivator of the poppy had been convicted of a breach of Rule 9 of the Rules made under S. 5, on the ground that he had consumed poppy heads of his own growth and thereby contravened the rules—*Held*, that Rule 9 read in connection with other rules did not necessarily imply that the holder of a cultivator's license was prohibited from consuming opium of which he was lawfully possessed under his license. ('84) 1884 Pun Re (Cr) No. 12, p. 16 (17) (FB). (1875 Pun Re (Cr) No. 7, *Overruled*.)

[8] Accused failing to inform patwari of quantity of out-turn of their poppy cultivation—*Held*, there was nothing in the rules framed under Ss. 5 and 13 which required a poppy cultivator to inform patwari of quantity of out-turn of poppy heads. ('83) 1883 Pun Re (Cr) No. 16, p. 27 (28) (DB).

[9] Rule 9 (f) of the rules made by Local Government provided that a cultivator's license might be granted subject to the condition that the cultivator shall enter or cease to be entered on his license the actual out-turn of poppy heads—*Held*, that to omit to have the entry made was a breach of the condition of the license and not a contravention of the Rule that a license may be granted subject to certain specified conditions. ('93) 1893 Pun Re (Cr) No. 10, p. 52 (54).

[10] Accused was charged with an offence of selling opium more than 3 tolas without a pass in contravention of S. 5 and R. 38 of the Rules passed thereunder—*Held*, that this was a clear offence against the rules framed under the Act and not a mere breach of the license. ('99) 1 Bom L R 677 (678) (DB).

[11] Under R. 49, sub-cl. 3 (f) of the Rules framed by the Punjab Govt. under S. 5 of the Opium Act a retail licensee for the sale of opium is bound to keep correct daily accounts of sales of opium. A contravention of this rule is punishable under S. 9 of the Act. 1919 Lah 118 (117) [AIR V 6] : 1919 Pun Re (Cr) No. 9 : 20 Cri L Jour 419 (DB).

**6. Duty on opium imported by land.** [*Repealed by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II.*]

**\*[7. Warehousing opium.**

The <sup>A</sup>[State Government] may, by notification published in the <sup>A</sup>[Official Gazette], declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by that Government, or into any specified part thereof, and intended to be exported thence.

**Section 5 — Note 1 (contd.)**

[12] Where a person to whom a license has been granted for selling opium omits to write up the accounts as soon as the transactions of each day are over he commits a breach of Rule 25 framed by Local Government of Oudh under S. 5 of Opium Act, and is liable to punishment under S. 9 (g) of the Act. 1925 Oudh 350 (350) [AIR V 12] : 28 Cri L J 1308.

[13] The rules framed in exercise of the powers conferred by S. 5 cannot be sent for reference under S. 432, Cr. P. C. because there is no express provision in the Act making the rules as part of the Act itself. 1956 Pepsu 73 (73) [AIR V 43 C 23] : 1956 Cri L Jour 1014.

[14] The accused was convicted under S. 9 (g) of contravening the rule under Opium Act in that he contravened a rule made under S. 5 by not keeping a regular account of opium found in his possession — *Held* that the person who contravened a condition of a license imposed under a rule may be considered guilty of a breach of the rule. ('86) 1886 Rat 297 (298) (DB).

[15] A person having license for the sale of opium is guilty of an offence under S. 9 if he permits some other person to act as salesman at his shop without express sanction of the Collector first obtained. ('04) 1 All L Jour 245 (246).

[16] Servant of licensed vendor of opium selling opium to person under 14 years — Master held liable under S. 9 even though he may not be aware of the sale. ('12) 13 Cri L Jour 282 (283) : 34 All 319 (DB).

[17] The plaintiff a farmer of the monopoly of the sale of drugs entered into an agreement with the defendant whereby the defendant as his servant or agent was to sell drugs supplied to him by the plaintiff and hand over the proceeds of the sales to the plaintiff after deducting certain percentage as remuneration for his services — *Held*, the defendant was not the lessee of the farmer, he was merely an agent or servant of the farmer appointed by him to sell drugs for him at a particular shop. The shop still remained the shop of the farmer. Therefore, the defendant required no license from the plaintiff authorising him to sell the drugs. His possession and acts were those of the master or the principal. There was nothing in Act 1 of 1878 or in rules framed under it to say that a farmer may not appoint an agent or servant to act for him in the sale of drugs or to prevent remuneration of such agent or servant by a percentage on the proceeds of the sales. ('83) 1883 Pun Re (Cr) No. 105 p. 328 (330) (DB).

[18] While a contravention of the rules is punishable as an offence under S. 9, a con-

travention of the conditions of the permit is not penal. The only penalty for such a contravention is the cancellation of the license and the forfeiture of the money paid in pursuance of the license. 1921 Oudh 143 (143) [AIR V 8] : 24 Oudh Cas 235 : 22 Cri L Jour 743.

[19] Certain poppy cultivators were charged of having sold their produce without having first entered the amount on their licenses — *Held* that R. 21 was not applicable to cultivators of poppy because the patwari had neglected to supply the cultivator's license. As there was no illicit cultivation of poppy and no extraction of opium the cultivators had not contravened the rules. ('85) 1885 Pun Re (Cr) No. 46 p. 104 (104) (DB).

[20] Section 5 Cl. (f) of the Opium Act authorizes the local Government to frame rules for regulating the sale of opium and S. 9 makes it an offence to sell opium in contravention of the Act and the rules so framed. The Local Government cannot, however, delegate this power of making the rules to the Commissioner in Sind and therefore the last words of rule 39 "or in such form as the Commissioner from time to time prescribes" are ultra vires. A breach of the terms of a license which is not in the form E as prescribed by the Act but in the form approved of by the Commissioner in Sind cannot be punished under the Act. ('08) 8 Cri L Jour 188 (189) : 1 Sind L R 70 (DB).

[21] The amendment of R. 215 of the Punjab Opium Orders by the State Government does not exceed in any manner the powers conferred on the Government under S. 5 of the Opium Act. 1956 Pepsu 73 (74) [AIR V 43 C 23] : 1956 Cri L Jour 1014.

[22] Punjab Opium (Restriction on Oral Consumption) Rules (1957) which in effect introduced rationing leading to complete prohibition are not inconsistent with the provisions of the Opium Act under which they were promulgated, nor are their provisions beyond the scope of the Act. 1958 Punj 406 (402). [AIR V 45 C 114] : ILR (1958) Punj 1332.

[23] Punjab Opium (Restriction on Oral Consumption) Rules, 1957 — Constitutional validity — Rules do not impose unreasonable restrictions on trade of opium and so do not contravene Art. 19 (1) (g), Constitution of India. 1958 Punj 400 (402) [AIR V 45 C 114] : ILR (1958) Punj 1332.

[24] In the context the term "regulation" in S. 5 includes restriction and also prohibition of the opium trade. 1958 Punj 400 (402) [AIR V 45 C 114] : ILR (1958) Punj 1332.

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse.]

[a] *Substituted* for the original section, by A. O., 1937 [1-4-1937].

### 8. Power to make rules relating to warehouses.

The <sup>a</sup>[State Government] <sup>a</sup>[\* \* \*] may, from time to time, by notification in the <sup>a</sup>[Official Gazette] make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

[a] The words "subject to the control of the Governor-General-in-Council" were *omitted* by A. O., 1937 [1-4-1937].

### 9. Penalty for illegal cultivation of poppy, etc.

Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

<sup>a</sup>[\* \* \* \* \*]

<sup>a</sup>[(a)] possesses opium, or

<sup>a</sup>[(b)] transports opium, or

<sup>a</sup>[(c)] imports or exports opium, or

<sup>a</sup>[(d)] sells opium, or

<sup>a</sup>[(e)] omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

<sup>b</sup>[shall, on conviction before a Magistrate, be punishable for each such offence with imprisonment which may extend to three years, with or without fine];

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which

#### SECTION 9 — SYNOPSIS

1. Possession.
2. Joint possession.
3. Possession of railway receipt.
4. Illicit possession.
5. Transporting opium.
6. Importing opium.
7. Exporting opium.
8. Illicit sale of opium.
9. Master and servant.
10. Offences in respect of keeping of accounts of opium.
11. Violation of the conditions of license.
12. Contemplating violation of provisions of the Act.
13. Abetment of offences under S. 9.
14. Frame of charge under S. 9.
15. Evidence.
16. Confession before Excise Officer.
17. Onus.
18. Jurisdiction.
19. Punishment.
20. Obtaining excess opium by personation.

1. Possession. — [1] Possession implies both animus or knowledge and control. Where the facts proved leave it uncertain whether the accused or someone else was the person who had the knowledge and control necessary

to constitute possession of the article seized, the prosecution must fail. 1931 Mad 490 (492) [A I R V 18] : 32 Cri L Jour 907 + 1957 Him-Pra 37 (38, 39) [AIR V 44 C 14] : 1957 Cri L Jour 631 (2). (Where illicit opium was recovered from a motor garage belonging to the accused, it was held that even assuming that the accused used to keep his car in the garage and the same was in his possession, still it was incumbent upon the prosecution to establish that the accused was in conscious possession of the opium in question.) + 1951 Mad 885 (2) (885) [AIR V 38 C 313] : 52 Cri L Jour 1074. (In the absence of proof that the medicine or pills in fact contained opium and that the shop-keeper was aware of the presence of opium in the medicine or pills, his conviction under S. 9 (a) of the Opium Act cannot be upheld.) + 1950 All 364 (365) [AIR V 37 C 134] : 51 Cri L Jour 980. (Section 9 makes the illegal possession of opium an offence.) + 1950 Assam 152 (153) [A I R V 37 C 55] : 1 L R (1950) 2 Assam 333 : 51 Cri L Jour 973 (DB). (Mere recovery of opium from a house in which he lives along with other persons would not be sufficient to show that he was in possession with knowledge of its existence.) + 1942 Oudh 270 (273) [A I R V 29] : 17 Luck 577 : 43 Cri L Jour 406. (Where a person does not actually reside in the premises and opium is recovered from the place of which he is the joint owner, it cannot be presumed that the man is in conscious possession of the opium.) + 1930 Cal

may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

[a] Sub-clauses (a) and (b), relating to the cultivation of poppy and the manufacture of opium, were omitted and the subsequent sub-clauses relettered, by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II. [b] *Substituted* for "shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both," by the Opium Laws (Amendment) Act, 1957 (LII of 1957), S. 3 [21-12-1957].

#### STATE AMENDMENTS

##### ASSAM

In its application to the State of Assam this section has been amended by Assam Act I of 1933.

##### MADHYA PRADESH

In its application to the State of Madhya Pradesh, in section 9—

(1) in clause (a) after the word 'possesses' insert the words "or uses";

(2) for the words "one year or with fine which may extend to one thousand rupees or with both" substitute the words and figures "two years or with fine which may extend to two thousand rupees or with both; provided that, in the absence of special reasons to the contrary mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than Rs. 500";

(3) add the following Explanation to section 9—

"*Explanation.*—The possession of a Railway receipt or a Postal receipt relating to an undelivered parcel of opium lying in a railway or post office *prima facie* constitutes possession of the opium within the meaning of clause (a) of section 9, unless the accused person is able to give a satisfactory explanation of its possession."

—M. B. Act XV of 1955, S. 3 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

##### MADRAS

In section 9 for the words beginning with "imprisonment for a term" and ending with "or with both" substitute the words "imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both".

—Mad. Act XXXII of 1951, S. 2 [23-10-1951].

##### Section 9 — Note 1 (contd.)

668 (670, 671) [AIR V 17] : 32 Cri L Jour 245 (DB). (Where there is undoubtedly ground for grave suspicion regarding possession against the accused but the element of reasonable doubt is not excluded, it would not be safe to conclude that the accused had knowledge which is necessary to convict him of the offence. The onus of proving knowledge is upon the prosecution and relying solely upon the fact that the opium was found in the accused's cabin without proof of any additional or extraneous facts to establish any connection between him and the opium is not sufficient to discharge that onus.) \*1929 Rang 121 (121) [A I R V 16] : 7 Rang 11 : 30 Cri L Jour 753 \* ('03) 16 C P L R 13 (17) \* ('12) 13 Cri L Jour 122 (122) (Low Bur).

[See also 1960 Orissa 139 (140) [A I R V 47 C 42] : 1960 Cri L Jour 1126 (DB).]

[But see ('11) 12 Cri L Jour 178 (178) : 37 Cal 24 (DB). (For the purposes of an offence under S. 9 nothing is necessary beyond possession of contraband opium. There is no particular frame of mind necessary. If contraband opium is found in a boat, the owner of the boat may be said to be in possession of the opium but not the crew of the boat.) \*('04) 8 Cal W N 349 (351, 352) (DB). (Where the existence of more than 5 tolas of opium in a boat is not accounted for satisfactorily, it is to be considered in possession of the person who is in possession of the boat as manghi. It cannot be considered as possession of the crew.)]

[2] Where opium was found in accused's house during his absence, *Held* that posses-

sion of opium could not be attributed to him in the sense required by law. 1914 Oudh 171 (172) [AIR V 1] : 15 Cri L Jour 420.

[3] *B* a licensed opium seller was in the habit, when he went home in the evening, to put the opium in a locked box and make it over to *G* shopkeeper and neighbour of *B* for safe custody during night. The key was with *B* himself—*Held*, such custody did not amount to possession by *G* of the opium. ('03) 25 All 263 (263).

[But see ('11) 12 Cri L Jour 185 (185) (DB) (Mad). (Where one person leaves a locked up box containing opium in the house of another person, the latter is in illegal possession of opium.)]

[4] *A* and *B* purchased half a tola of opium each, *B* left his share near *A* and went to fetch water—*Held* that under the circumstances *A* could not be held to have been in possession of *B*'s share. ('29) 30 Cri L Jour 727 (727) (Nag).

[5] Empty house occasionally occupied by owner—Key of outer door with servant—Opium found in locked room inside house—Key of locked room not with servant—Owner held liable to account for opium. 1944 Oudh 297 (298) [AIR V 31] : 46 Cri L Jour 364.

[6] Mere physical possession without knowledge and assent would not constitute that possession which in law is necessary to the commission of an offence. Where a child travelling in the care of person is found carrying tins of opium, the presumption would be that the child was acting under the direction and control of the latter. The latter has the means of knowing what kind of luggage

**PUNJAB**

- (1) For the words "one year" the words "two years" shall be substituted; and shall be deemed to be substituted.
- (2) For the words "one thousand" the words "two thousand" shall be substituted; and shall be deemed to be substituted.
- (3) The last para shall be deemed to be omitted.

—Punj. Act III of 1925, S. 2.

**WEST BENGAL**

- (1) In section 9 for the words "one year or with fine which may extend to one thousand rupees" the words "two years or with fine" shall be substituted;
- (2) For the word "Magistrate" wherever it occurs, the word "Court" shall be substituted;
- (3) To the section the following Explanation shall be added, namely:—

"Explanation.—The possession of a railway receipt or a steamer or a mate's receipt relating to an undelivered parcel of opium lying in a railway or steamer office *prima facie* constitutes possession of the opium within the meaning of clause (a) of section 9, unless the accused person is able to give a satisfactory explanation of its possession."

—Bengal Act V of 1933, S. 4.

**SECTIONS 9-A to 9-G****ASSAM**

New sections were added after section 9 by Assam Act I of 1933.

**MADHYA PRADESH**

In its application to the State of Madhya Pradesh, after section 9 insert the following new sections, namely,—

"9A. Import, export, transport, sale or possession by one person on account of another. —

- (1) When opium is imported, exported, transported, sold or possessed by any person on account of any other person and such other person knows or has reason to believe that such import, export, transport, sale or possession is on his account, the opium shall, for the purposes of this Act, be deemed to be imported, exported, transported, sold or possessed by such other person.

- (2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, sells or possesses opium on account of another person, from liability to any punishment under this Act, for the unlawful import, export, transport, sale or possession of such opium.

**Section 9 — Note 1 (contd.)**

his companion is taking about with him and of satisfying himself that the child was not carrying contraband and breaking the law and of preventing him from doing so. ('92-96) 1892-96 Upp Bur Rul 139 (140).

[7] Any possession of opium beyond the prescribed quantity amounts to an offence under the Opium Act and Rules. It cannot be said that when possession is on behalf of another it is not possession within the meaning of the Opium Act and the Rules. The offence consists in the possession of an amount beyond the prescribed amount without reference to any question as to any alleged proprietary right to any portion of the opium. ('05) 1 Weir 832 (833) (DB) + 1934 Rang 83 (83) [AIR V 21]. (It is the mere illegal possession that is punishable and that possession does not rest on any presumption that the law orders to be drawn.)

[8] The mere fact that a passenger by boat has contraband opium with him places no liability on the boatman to give any satisfactory account of the opium; more especially where the prosecution evidence shows that it was the passenger who had the opium; the boatman, in such a case cannot be convicted under S. 9, the Opium Act. 1920 Cal 741 (741) [AIR V 7] : 22 Cri L Jour 21 (DB).

[9] The mere possession of the paraphernalia of opium smoking is not in itself an offence under S. 9. 1931 Rang 14 (14) [AIR V 18] : 32 Cri L Jour 506.

[10] Any possession of opium beyond the prescribed quantity amounts to an offence

under the Act. The offence consists in the possession of the amount beyond the prescribed amount without reference to any question as to any alleged proprietary right to any portion of the opium. ('05) 1 Weir 832 (833) (DB).

[11] The mere fact of opium having been discovered on being pointed out by the accused would not be sufficient to prove possession of the opium by the accused within S. 9 of the Opium Act, but where he makes a statement that he has buried opium at a certain place, that, along with the production of the opium from the spot referred to in the statement, is sufficient to establish the accused's possession and control over the opium even though the spot where it was buried was neither owned nor possessed by the accused. 1951 Him Pra 28 (30) [AIR V 38 C 7] : 1952 Cri L Jour 267.

[12] The mere fact that illicit opium was recovered from possession of accused from different places will not divide his possession so as to constitute different offences of possession with regard to it, and as such there can be no question of separate trials under S. 233, Criminal P. C. 1960 Punj 643 (644). [AIR V 47 C 227] : 1960 Cri L Jour 1657.

[13] The possession of poppy heads from which the opium has already been extracted, is not an offence under the Section. 1958 Punj 77 (78) [AIR V 45 C 22] : 1 L R (1957) Punj 1371 : 1958 Cri L Jour 418 (1) + 1957 Orissa 95 (96) [AIR V 44 C 29] : 1957 Cri L Jour 529 + 1957 Orissa 93 (95) [AIR V 44

**9B. Criminal liability of licensee for acts of servants.** — When any offence punishable under section 9 is committed by any person in the employ and acting on behalf of the holder of a licence, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

**9C. Penalty of certain acts by licensee or his servant.** — If the holder of any licence, permit or pass granted under this Act, or any person in his employ and acting on his behalf—

- (a) fails to produce without satisfactory explanation such licence, permit or pass on the demand of any officer empowered by the State Government by notification in the Official Gazette to make such demand, or
- (b) in any case not provided for by section 9, wilfully contravenes any rule made under section 5 or section 8, or
- (c) wilfully and knowingly does any act in breach of any of the conditions of the licence, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

he shall, for every such offence, be punished with fine which may extend to five hundred rupees.

**9D. Penalty for possession of opium in respect of which any offence has been committed.** — If any person without lawful authority has in his possession any quantity of opium knowing the same to have been unlawfully imported, transported or manufactured or knowing that the prescribed duty has not been paid thereon, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

**9E. Penalty for allowing premises to be used for commission of offence.** — Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle or place knowingly permits it to be used for the commission by any other person of an offence punishable under section 9 on conviction be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.

**9F. Penalty for attempting or abetting offence.** — (1) Whoever attempts to commit an offence punishable under this Act, or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, on conviction, be punishable with punishment provided for the offence.

#### Section 9 — Note 1 (contd.)

C 28] : ILR (1957) Cut 128 : 1957 Cri L Jour 527 \* 1956 Punj 159 (160) [AIR V 43 C 58] : ILR (1956) Punj 416:1956 Cri L Jour 917 (DB).

[14] Where a prosecution was lodged on the basis of recovery of certain incriminating articles from a house, unless the house is shown to have been in the occupation and control of the accused, the mere factum of recovery of the incriminating articles therefrom cannot fasten criminal liability on him. 1956 Him Pra 26 (27) [AIR V 43 C 12] : 1956 Cri L Jour 747.

[15] Large quantity of opium found in house of accused — Circumstances of case raising inference that accused had knowledge of presence of opium in his house — Accused failing to account satisfactorily for possession of such opium — Accused held guilty under S. 9. 1949 Assam 73 (74) [AIR V 36 C 35] : 51 Cri L Jour 51 (DB).

**2. Joint possession.** — [1] There may be a joint criminal possession of an excisable article by several persons. Each case must be decided on the evidence. Certain quantity of opium was discovered in an house occupied by three brothers living jointly. It was held that in the circumstances of the case eldest brother alone should be convicted. 1938 Lah 320 (321) [AIR V 25] : 39 Cri L Jour 486.

[2] Two brothers were the joint owners of the shops from which illicit opium was recovered. The elder brother had had possession of opium under a license previously—Held that

the presumption might safely be made that the possession of the opium was that of the elder brother and that the younger brother should not be held guilty. 1925 Lah 477 (478) [AIR V 12] : 6 Lah 311 : 26 Cri L Jour 1268.

[3] If it is proved that a person is in possession on behalf of others as also of himself of opium the total quantity of which is less than all the joint owners are entitled to possess he would not be guilty of any offence. Two persons were found in possession of 9 mashes of chandu, the amount allowed by law to each person being 6 mashes i.e. they were in joint possession of less than the two of them could have held separately — Held that neither of them could be convicted of an offence under Opium Act. 1930 Lah 342 (344) [AIR V 17] : 31 Cri L Jour 240.

[4] The accused was charged for being in possession of 11½ tolas of opium and acquitted on the ground that there were other members of his family who took opium — Held that the order of acquittal was wrong for there was no proof that the accused was in possession of the opium on behalf of other members of the family. ('05) 1905 Pun Re (Cr) No. 34 p. 72 (73) (DB) + ('02) 1902 Pun Re (Cr) No. 31 p. 82 (83) (DB).

[5] A person found in possession of a quantity of opium in excess of what he can lawfully possess for his own personal use is guilty of an offence under S. 9 and the fact that he used to give opium to the other members of his family to eat does not make them joint

(9) Whoever abets an offence punishable under this Act, shall, whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in section 118 of the Indian Penal Code, on conviction, be punishable with the imprisonment provided for the offence.

*Explanation.* — The word 'abets' as used in this section and in section 9G has the same meaning as in section 107 of the Indian Penal Code.

9G. *Penalty for attempting or abetting offence outside Madhya Pradesh.* — Any person who in Madhya Pradesh attempts or abets the commission in any place outside Madhya Pradesh of any offence punishable under this Act or under the provision of any corresponding law in force in that place, or does any act preparatory to, or in furtherance of any act which, if committed in Madhya Pradesh, would constitute an offence under this Act, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

*Explanation.* — The offences referred to in this section are independent of the existence, location, possession, original destination or other attribute of the opium to which they relate.

9H. *Enhanced punishment after previous conviction.* — Whoever, having been convicted of an offence punishable under sections 9, 9A, 9B, 9C, 9D, 9E, 9F and 9G is again convicted of any offence punishable under any of those sections, shall be liable for each such subsequent offence to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

9I. *Special provision regarding fine.* — Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the first class to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening the provisions of sections 9 to 9G.

9J. *Security for abstaining from commission of certain offences.* — (1) Whenever any person is convicted of any offence punishable under sections 9 to 9G and the Magistrate convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under those sections, the Magistrate may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period not exceeding three years. The Magistrate shall, in his order, also specify the term of imprisonment the accused shall serve in the event of his failure to execute bond, such term not exceeding one year in any case.

#### Section 9 — Note 2 (contd.)

possessors of opium with him. 1918 Lah 372 (372) [AIR V 5]: 1918 Pun Re (Cr) No. 3 : 19 Cri L Jour 364 (DB).

[6] Where proceedings for being in unlawful possession of opium are taken against a member of a joint family not being the head of such joint family, the opium being found in the common room of the joint family house it is incumbent on the prosecution to give good evidence that the opium was in the exclusive possession and control of the particular member of the joint family who is sought to be charged with its possession. ('99) 2 Oudh Cas 99 (101).

[7] It is not always that the wife cannot be held responsible for what she and her husband are found in possession of. To make the wife liable for illegal possession of opium jointly with her husband something more must be proved beyond the fact that the opium was found in the house where both lived and that she knew of its existence. 1937 Rang 434 (436, 437) [AIR V 24]: 39 Cri L Jour 278.

[8] Possession of husband does not necessarily connote that the wife is also liable under S. 9. 1935 Pesh 68 (69) [AIR V 22]: 36 Cri L Jour 1437.

[9] When at a search conducted by the Excise Inspector, a packet of opium was recovered from a box in a house of which the accused was the master, he must be held to be

the person in possession of opium. It is not necessary for the prosecution to prove who put it in that box. A wife cannot be held to be in joint possession with her husband of anything found in the house. ('30) 1930 Mad W N 1103 (1105).

[10] Where the petitioner's cook room which was the place in which opium was found was such that several persons had equal right of access thereto — Held that petitioner could not be convicted of illegally possessing opium. 1922 Pat 387 (387) [AIR V 9]: 23 Cri L Jour 264.

[11] Husband and wife living together — Contraband opium of one anna weight recovered from tin terna in house and of two tolas and twelve annas weight from person of wife — No definite evidence led against husband either for possession or for abetting wife for possessing opium — Conviction of husband held could not be maintained. 1955 N U C (Assam) 4217 [AIR V 42].

[12] Excisable articles recovered from a place in a house occupied by the accused, his aged father and his son — Articles recovered under such circumstances that persons frequenting the house must have been aware of their existence — Accused confessing before excise officer that he had kept these articles in the house and that his father and son had nothing to do with — Accused held was rightly convicted under S. 9 (a) of the Act. ('55) ILR (1955) Cut 109 (111, 112).



(2) The bond shall be in the form contained in the Schedule hereto annexed, and the provisions of the Code of Criminal Procedure, 1898, shall, in so far as may be, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of the said Code.

(3) If the conviction be set aside on appeal or in revision, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate Court or by the High Court when exercising its powers of revision."

—M. B. Act XV of 1955, S. 4 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

## SECTIONS 9A to 9C

### WEST BENGAL

After section 9 the following new sections shall be inserted,—

"9A. *Import, export, transport, sale or possession by one person on account of another.*—

(1) When opium is imported, exported, transported, sold or possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport, sale or possession is on his account, the article shall, for the purposes of this Act, be deemed to be imported, exported, transported, sold or possessed by such other person.

(2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, sells or possesses opium on account of another person from liability to any punishment under this Act, for the unlawful import, export, transport, sale or possession of such article.

9B. *Criminal liability of licensee for acts of servant.*—When any offence punishable under section 9 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

9C. *Penalty for certain acts by licensee or his servant.*—If the holder of any license, permit or pass granted under this Act or any person in his employ and acting on his behalf

(a) fails to produce without satisfactory explanation such license, permit or pass on the demand of any officer empowered by the Provincial Government by notification in the Official Gazette to make such demand, or

### Section 9 (contd.)

#### 3. Possession of railway receipt. —

[1] Per Richardson J. — When the consignee of a railway receipt knows that a parcel containing opium has been sent to him, the possession of the railway receipt constitutes possession of the opium. 1919 Cal 777 (778) [AIR V 6] : 46 Cal 820 : 20 Cri L Jour 629 (DB).

4. *Illicit possession.* — [1] The quantity of opium that may be possessed by any person is determined by the rules issued by the Government under the powers conferred by S. 5 of the Act. Where the possession of the accused is not contrary to the terms of his license he is not guilty. 1917 Lah 436 (436) [AIR V 4] : 1917 Pun Re (Cr) No. 41 : 18 Cri L Jour 977 (DB).

[2] Possession of a black substance containing only traces of opium and hardly more than one per cent. of it and which is unfit to be used as opium, is not an offence for which the person possessing it is liable to conviction under the Opium Act as for illegal possession of opium. 1917 Cal 307 (308) [AIR V 4] : 17 Cri L Jour 412 (DB).

[3] The Opium Rules 1910 include beinchi in what is there called "defined opium" and allow the possession of such opium by a non-Burman upto 3 tolas in weight if bought by him from a licensed vendor. 1914 Upp Bur 15 (15) [AIR V 1] : 2 Upp Bur Rul 1 : 15 Cri L Jour 532. ((1892-96) 1 Upp Bur Rul 133, held no longer good law.)

[4] A person in possession of both beinchi and beinchi is not guilty under S. 9, Opium Act but is guilty under S. 10 (b), Dangerous Drugs Act. 1933 Rang 258 (258) [AIR V 20] : 11 Rang 436 : 34 Cri L Jour 1085 (DB).

[5] Pyaungchi and opium refuse are not opium within S. 3 — Registered opium-smoker found in possession of three tolas of raw opium and some pyaungchi and opium refuse — Person held could not be convicted. 1937 Rang 346 (347) [AIR V 24] : 38 Cri L Jour 1092.

[6] The opium water in the rules and directions made under the opium Act is a mixture of water with capsules of the poppy or with the juice of such capsules of the poppy or a mixture of such with neutral materials. A registered opium-smoker being legally entitled to possess opium for his own consumption, possession of prepared opium mixed with water does not amount to an offence under the Opium Act. 1937 Rang 194 (195) [AIR V 24] : 14 Rang 694 : 38 Cri L Jour 765.

[7] There is no rule allowing a person to possess opium purchased by another person, nor to possess opium in excess of 3 tolas which has been purchased for other persons, or which has been handed over to him to carry. (1892-96) 1 Upp Bur Rul 137 (137).

[8] An authorised agent of a retail vend licensee is authorised to keep opium under his license in his vend premises to the extent allowed by the license and if the amount found is not beyond the limit of his license



(b) in any case not provided for by section 9, wilfully contravenes any rule made under section 5 or section 8, or

(c) wilfully and knowingly does any act in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act, he shall, for every such offence, be punished with fine which may extend to five hundred rupees.

**9D. Penalty for possession of opium in respect of which an offence has been committed.**— If any person without lawful authority has in his possession any quantity of opium knowing the same to have been unlawfully imported, transported, or manufactured or knowing that the prescribed duty has not been paid thereon, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

**9E. Penalty for attempting or abetting offence.**— Whoever attempts to commit or abets the commission of an offence punishable under this Act, shall be punished with the punishment provided for such offence.

*Explanation.*— The word "abets" as used in this section and in section 9F has the same meaning as in section 107 of the Indian Penal Code.

**9F. Penalty for attempting or abetting offence outside West Bengal.** *Explanation:*— Any person who in West Bengal attempts, or abets the commission, in any place outside West Bengal, of any offence punishable under this Act or under the provisions of any corresponding law in force in that place, or does any act preparatory to, or in furtherance of, any act which, if committed in West Bengal, would constitute an offence against this Act, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

*Explanation:*— The offences referred to in this section are independent of the existence, location, possession, origin, destination or other attribute of the opium to which they relate.

**9G. Enhanced punishment after previous conviction.**— Whoever, having been convicted of an offence punishable under sections 9, 9A, 9B, 9C, 9D, 9E, or 9F, shall be guilty of any offence punishable under any of those sections shall be liable for each such subsequent offence to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

—Beng. Act V of 1933, S. 5.

#### Section 9 — Note 4 (contd.)

conviction cannot stand. 1921 Lah 169 (170) [AIR V 8].

[9] In cases under S. 9 for possession of contraband opium it is the duty of the prosecution to send the article in question to the chemical examiner for chemical examination because, without it, it cannot be said as to how much percentage of the substance is there which would make its possession culpable. (157) 1957 Cri L Jour 237 (238) (Raj).

**5. Transporting opium.**— [1] A licensed cultivator of opium took opium from Hoshiarpur to Jalandhar district where he sold it to a retail vendor—*Held* that in taking opium from one district to another the cultivator must necessarily have transported the opium and as under the rules only a farmer, a licensed vendor or a wholesale licensed vendor could transport opium, the cultivator was liable to punishment under S. 9. (184) 1884 Pun Re (Cr) No. 13, page 17 (18) (DB).

[2] *M*, debarred person found in possession of opium while carrying it to shop *P* license vendor—*M* producing transport license issued in name of *P*—*M* held rightly convicted under S. 9 (b) but *P*'s conviction was set aside. 1945 Mad 52 (52, 53) [AIR V 32] : 1 L R (1945) Mad 461.

[3] Under R. VIII of the Opium Rules of 1891, a farmer desiring to transport opium from one taluq to another taluq of the same district must "when the taluqs of the district are farmed to different farmers" obtain a pass

for each consignment from the officer-in-charge of the excise revenue of the district or from the Tahsildar of the taluq. (105) 1 Weir 833 (833).

[4] Where opium was recovered on search from a car during transport, all the occupants of the car must be presumed to commit an offence in respect of that opium under the Act, unless they can show that they had a right to transport it in the manner in which they were doing. 1958 Madh Pra 285 (285, 286) [AIR V 45 C 104] : 1958 Cri L Jour 1194.

[5] Where a person transports opium and is in possession of it at the time of transporting it, he commits two offences, viz., (1) of transporting opium and (2) of possessing opium and he can be convicted of both the offences. 1958 S C 935 (936) [AIR V 45 C 131] : 1959 S C R 1162 : 1958 Cri L Jour 1432.

[6] If the person possessing opium does not carry it himself but entrusts it to some other person for carriage in a car and that person carries the opium knowingly, then the driver of the car would be the person who transports the opium and the person who directs him to do so would be the abettor of the offence of transporting and the occupants of such a car besides the driver can be said to have transported the opium if it is shown that the opium in the car was in their possession so as to make them liable for the offence of possession. 1952 Madh B 17 (19) [AIR V 39] : 1952 Cri L Jour 246.

[7] Mere transport of contraband opium

**Section 9 — Note 5 (contd.)**

would be no offence. In order that a person be held to have committed the offence under S. 9 (b), there should be a finding that he knew that he was transporting contraband opium. 1953 Him Pra 36 (37) [AIR V 40 C 16] : 1953 Cri L Jour 590.

**6. Importing opium.**—[1] The offence of importing opium is an offence constituted by bringing it into the territory in question. It does not matter where it was before, provided it was outside the province. The offence is in bringing it in. If the goods once come across the border of the territory in question, if they come for and on account of the accused with his consent, let alone by his procurement, the offence of importing is complete. It is not necessary to show that the accused did anything outside the territory. 1932 Cal 465 (466) [AIR V 19] : 59 Cal 1065 : 33 Cri L Jour 267 (DB).

[2] One V hired N's cart to carry cuminseed from Ranapur into British India. Illicit opium was found concealed in the cuminseed. V and N both were convicted of illegally importing opium without a licence—*Held* as there was nothing to show that V knew that N was carrying opium in his cart he could not be convicted. ('88) 1888 Rat 378 (378) (DB).

[3] Where a person under a pretended name consigned from Kotah, a native state, into Cawnpore in British India, bags of maize containing considerable quantity of opium which was detected at Cawnpore and searched in his presence—*Held* that the offence under S. 9 was committed. 1924 All 558 (559) [AIR V 11] : 46 All 146 : 25 Cri L Jour 612 (DB).

[4] Per *Shamsul Huda J.*—When the consignee of a railway receipt knows that a parcel containing opium has been sent to him, the possession of the railway receipt amounts to importing opium. 1919 Cal 777 (778) [AIR V 6] : 46 Cal 820 : 20 Cri L Jour 629 (DB).

[5] Where the case against the accused is that he imported opium, and he did so by carrying it himself, and his possession was the method of importing it, the magistrate is not justified in convicting him for two separate offences under S. 9 (a) and S. 9 (c) of the Opium Act for the same act, and in imposing two separate sentences therefor. 1950 Assam 5 (6) [AIR V 37 C 2] : 51 Cri L Jour 240 (DB) \* 1952 Madh B 17 (19) [AIR V 39] : 1952 Cri L Jour 246.

**7. Exporting opium.**—[1] Where the accused tendered a parcel of opium at the Post Office for despatch to Burma but the parcel was opened by the Post Master at the place of despatch on account of information received and sent on to Burma marked "doubtful" with a view to the identification of the consignee—*Held* that the accused did not commit the offence of exporting opium under S. 9 as the parcel was seized by the authorities before despatch and it ceased to be in the Post Office on accused's account before it left India for Burma. ('11) 12 Cri L Jour 116 (117) (Lah).

[2] An unlawful possession of opium with the intention of eventually exporting it, does not amount to "exporting" opium. 1916 Lah 143 (143) [AIR V 3] : 1916 Pun Re (Cr) No. 15 : 17 Cri L Jour 194 (DB).

**8. Illicit sale of opium.**—[1] Several persons were found present in a house one of whom was smoking Chandu on the premises and there were found three pipes, two iron needles, one pair of tongs, one lamp and one smoking pillow. The quantity of opium found was within limits allowed by law. *Held* that the facts of the case were not sufficiently strong to allow a presumption to be drawn that an illicit sale of opium was being carried on in the premises. ('10) 11 Cri L Jour 138 (138) (All).

[2] There is a clear distinction between use of morphia in practice by an approved medical practitioner and sale of morphia by him to his patients. A sale is punishable under S. 9. 1920 Cal 403 (406) [AIR V 7] : 21 Cri L Jour 497 (DB).

[3] Accused convicted for having possessed opium in excess of quantity shown in the stock register and hidden in the premises—Cakes of opium supplied by the treasury proved to be often of overweight—Excess cannot be assumed to be due to selling under weight—Conviction was set aside. 1928 Cal 324 (325) [AIR V 15] : 30 Cri L Jour 37.

[4] Mere preparation of sugar-mixed opium pills is no offence, though prepared with intent to sell. 1924 Lah 529 (529) [AIR V 11] : 25 Cri L Jour 666.

[5] Selling opium without license and importing foreign opium into British India are different offences. 1937 Nag 188 (189) [AIR V 24] : 1 L R (1939) Nag 297 : 38 Cri L Jour 542.

**9. Master and servant.**—[1] The custody of a servant is not such "possession" as the Opium Act and the rules thereunder contemplate; a Burmese servant who has 3 tolas of opium with him on behalf of his master who is a non-Burmese is not guilty of illegal possession. ('10) 11 Cri L Jour 55 (56) : (1907-09) Upp Bur Rul 1.

[2] The prosecution must prove affirmatively that possession by the servant was on his master's behalf and with his authority to convict the latter. 1916 Lah 143 (144) [AIR V 3] : 1916 Pun Re (Cr) No. 15 : 17 Cri L Jour 194 (DB).

[3] To justify the conviction of a master under the Act based entirely upon the possession of it by another person alleged to be his servant, it is insufficient to merely call a witness who says that he is a neighbour of the servant and knows the fact of service. 1917 Pat 341 (342) [AIR V 4] : 18 Cri L Jour 633 (DB).

[4] Where the master is himself not entitled to be in possession of opium, the servant cannot plead possession on behalf of the master to a charge under S. 9. 1917 Mad 687 (687, 688) [AIR V 4] : 17 Cri L Jour 384.

[5] Servant selling opium to person under 14 years contrary to master's license in absence of master—*Held* master was properly

**Section 9 — Note 9 (contd.)**

convicted as mere selling of opium in contravention of conditions of license constituted offence without any question of intention. ('12) 13 Cri L Jour 282 (283) : 34 All 319 (DB).

[6] Sale of smuggled opium by servant of a contractor — Both servant and the master are criminally liable, though the master was not present at the time of sale. ('20) L R 1 All 58 (58) (Cr).

[7] Accused who was a licensed vendor of madak was punished for contravening a rule made under S. 5 which provided that he shall not allow any of the drug to be consumed on his premises. It was found that the accused was not present but his servant was present when the drug was consumed on his premises—*Held* that although generally a master was not criminally liable for the act of a servant done without his cognizance the accused was liable for the breach committed by the servant under S. 9. ('94) 7 C P L R (Cr) 41 (43).

**10. Offences in respect of keeping of accounts of opium.** — [1] Article 13 of the form No. 1 made under R. 15 of the rules made by the Government of Bengal required the holder of the license to keep a daily correct account showing the quantity of opium received and sold and other details—*Held* the rules made under S. 5 did not make preparation of incorrect accounts punishable under S. 9. ('99) 26 Cal 571 (573, 574) (DB).

[2] Rules made under the Opium Act held did not make neglect to keep accounts an offence punishable under the Act. ('05) 1 Weir 831 (832) (DB).

[3] Where a person to whom a license has been granted for selling opium omits to write up the accounts as soon as the transactions of each day are over he commits a breach of Rule 25 framed by Local Government of Oudh under S. 5 and is liable to punishment under S. 9. 1925 Oudh 350 (350) [AIR V 12] : 26 Cri L Jour 1306.

**11. Violation of the conditions of license.** — [1] While a contravention of the rules is punishable as an offence under Section 9 a contravention of the conditions of the permit is not penal. The only penalty for such a contravention is the cancelment of the license and the forfeiture of the money paid in pursuance of the license. 1921 Oudh 143 (143) [AIR V 8] : 24 Oudh Cas 235 : 22 Cri L Jour 743 \* ('96) 1896 Rat 860 (860) (DB).

[2] Neither the rules nor the terms of a license provide for any penalty against the authorised agent in respect of a mistake in the register. 1921 Lah 169 (170) [AIR V 8].

**12. Contemplating violation of provisions of the Act.**—[1] A person can be convicted for breach of the rules framed under S. 9 of the Opium Act only when he does some act in contravention of such rules and not merely for contemplating such a violation. 1915 Mad 29 (29) [AIR V 2] : 15 Cri L Jour 667 (DB).

**13. Abetment of offences under S. 9.** — [1] Abetment of possession of opium in con-

travention of the Opium Act or rules thereunder would be an offence. *A, B and C* who were licensed cultivators of poppy employed *D* to prepare opium for them. *D* was found in possession of 32½ tolas of opium and was convicted of illegally possessing opium—*Held* that as *A, B and C* were cultivators independent of each other and there was nothing to show as to what quantity of poppy-heads each of them made over to *D* so that it could not be said that any one of them abetted *D* in possessing more opium than he might lawfully possess, there was no sufficient foundation for a conviction of abetment of an offence of *D*. ('84) 1884 Pun Re (Cr) No. 4 p. 4 (6) (DB).

[2] On search one *G* was found in possession of opium in excess of what he was entitled to possess. Some persons were found in his house smoking opium amongst whom *C* was one. There was nothing to show that *C* was aware of existence of excess opium. *Held* that purchase or consumption of small quantity of opium provided by *G* could not be said to amount to abetment of *G*'s possession and it was impossible to convict *C* upon general inference from a certain trade carried on that the owner of the *chandu* possessed an illegal quantity. ('01) 1901 All W N 117 (118).

[3] There is no provision in the Opium Rules for the possession of more than three tolas of opium by one person, nor for the joint possession of more than that quantity by several persons and consequently possession of 5 tolas is illegal. The accused a Burman was the servant of a Chinaman who sent him with a letter to another chinaman for procuring opium. The opium was purchased at the licensed shop and was made over to the accused to carry to his master. On the road the accused was stopped by the police—*Held* that accused was aware that he was committing breach of law and his act was thus independent of the position of servant. His taking charge of opium might be regarded as possession, joint possession or abetment of possession. If the master committed the offence of possessing opium in contravention of the Opium Rules the servant abetted the commission of that offence. (1897-1901) 1 Upp Bur Rul 232 (235, 236).

[4] The Opium Act, 1878 does not contain any provision prescribing punishment for abetment of the offences under S. 9 of the Act. An abetment of the offence under S. 9 of the Opium Act is, however, an offence under S. 109 of the Penal Code read with S. 40 thereof and is chargeable and punishable thereunder. 1952 Madh B 17 (20) [AIR V 39] : 1952 Cri L Jour 246.

**14. Frame of charge under S. 9.** — [1] The proper and fair course in respect of a person accused of an offence under S. 9, (which is triable as a warrant case) is to charge him with possessing opium etc., as the case may be, in contravention of a rule made under S. 5 and to specify the rule contravened so that he may know precisely with what he is charged. The adoption of proper course is a safeguard against accused being misled in his defence which if it should occur may necessitate revision and a fresh trial at considerable

**Section 9 — Note 14 (contd.)**

inconvenience to the accused and to witnesses. ('88) 1888 Pun Re (Cr) No. 10, p. 14 (15) (DB) \* ('91) 1891 Pun Re (Cr) No. 19, p. 61 (62).

[2] Accused was suspected of trafficking in opium — The Magistrate entered in the charge the possession of articles to cook and smoke opium and omitted to enter the essential point constituting the offence namely that the accused was a Burman and as such not at liberty under the rules made under the Opium Act to be in possession of opium — Held this was not correct. ('92-96) 1 Upp Bur Rul 136 (136).

**15. Evidence.**—[1] It is incumbent upon Magistrates to scrutinize the evidence for the prosecution in all opium cases most closely in order to be satisfied that the evidence is truthful because S. 13 permits rewards to be paid to officers and informers and this prospect of rewards offers to a temptation to fabricate evidence and make false charges. ('90) 1890 Pun Re (Cr) No. 19, p. 40 (41).

[2] Wholly inadmissible and irrelevant statements admitted and considered by Lower Courts—Legal evidence not sufficient to establish illicit possession of opium — Accused prejudiced—Conviction set aside. ('94) 1894 Pun Re (Cr) No. 1, p. 1 (3).

[3] Opium was found in an inner room under a bed and in men's boots where the accused withdrew when the search party entered an outer room where she was being shampooed. Evidence showed that she was a mere visitor residing temporarily in the outer room — Held that her conviction was illegal unless the bed was shown to have been hers. Men's boots would not have belonged to her. 1923 Rang 152 (152) [A I R V 10] : 24 Cri L Jour 934.

[4] Evidence of witness that he heard window in accused's house opened with a bang and saw a bundle falling to the ground — Identification not satisfactory — Search list not stating that bundle was recovered from below accused's window—Held evidence was not sufficient for conviction. ('34) 35 Cri L Jour 1220 (1223) (DB) (Cal).

[5] In the absence of proof of incriminating statement made by an accused, leading to the discovery of the opium, the mere fact of the opium having been discovered on being pointed out by him would not be sufficient to prove possession of the opium by him within S. 9. 1951 Him Pra 28 (30) [A I R V 38 C 7] : 1952 Cri L Jour 267.

[6] Where a substantial amount of opium is found in the bedroom of the accused with weighing scales and small weights, knowledge of the presence of the opium in the house can reasonably be attributed to him. Under S. 10, Opium Act, the accused is then required to account satisfactorily for his possession, and his failure renders him liable to a conviction under S. 9 of the Act. 1949 Assam 73 (74) [AIR V 36 C 35] : 51 Cri L Jour 51 (DB).

[7] Where in a trial under S. 9 the only evidence of the recovery of the contraband opium was that of police employees. Held,

that for the simple reason that they were police employees their evidence could not be disregarded by a Court of revision when it had been accepted by both lower Courts, and especially where it was very difficult to procure any other witnesses in a jungle at the midnight. ('57) 1957 Cri L Jour 237 (238) (Raj).

[8] If an excise inspector says that certain article is crude opium without assigning reasons his testimony cannot be looked upon as merely an opinion of an expert. 1952 All 118 (118) [A I R V 39] : 1952 Cri L Jour 288 (DB).

[9] In a trial under S. 9, when other evidence on record was satisfactory to prove that the commodity in question was contraband opium, the accused could not be said to have been wrongly convicted for the possession of it simply because the opium was not submitted for chemical examination. ('56) 1956 Raj L W 54 (56).

**16. Confession before Excise Officer.** —

[1] An Excise Officer who in the conduct of investigation of an offence against the Excise, exercises the powers conferred by the Code of Criminal Procedure upon an officer-in-charge of a Police Station for the investigation of a cognizable offence is a Police Officer within the meaning of S. 25, Evidence Act. The legislature in using the term 'Police Officer' in S. 25 did not intend to exclude from its meaning Excise Officers exercising the powers of detection and investigation of crimes committed against Excise laws. 1934 Cal 580 (587) [AIR V 21] : 61 Cal 607 : 35 Cri L Jour 1071 (FB).

[2] The Excise Officers investigating offences are virtually deemed to be police officers. On principle also the position of a police officer cannot be distinguished from that of an Excise officer with regard to an offence under the Excise Act, because an excise officer is also interested in the conviction of the accused and in a position to dominate him. Therefore a confession made before an excise Officer during investigation is inadmissible in evidence under S. 25, Evidence Act. 1931 Cal 350 (352) [AIR V 18] : 32 Cri L Jour 640 : 58 Cal 1260 (DB).

[3] A confession by an accomplice to an Excise Officer is inadmissible as a piece of substantive evidence as against the other accused even if the latter had been tried along with the maker and a fortiori it is inadmissible as a piece of substantive evidence in a separate proceeding against the other accused. But where the maker is examined as a witness on behalf of the other accused it is admissible for the purpose of impeaching his credit in respect of the later statement made by him in his evidence in Court under the provisions of S. 155, Evidence Act. An Excise Officer is not to be regarded as a Police Officer for the purpose of S. 162, Criminal P. C. 1934 Cal 616 (617) [AIR V 21] : 61 Cal 967 : 35 Cri L Jour 1178 (DB).

**17. Onus.** — [1] Where possession of opium with accused is proved and its legality is challenged by the Crown, it is incumbent

**Section 9 — Note 17 (contd.)**

on the accused irrespective of the quality and quantity of the opium to prove that the accused obtained it legally. ('04) 17 C P L R 75 (94).

[2] Under S. 4 the possession of opium was prohibited except as permitted. Where the accused was charged of being in illicit possession of opium—*Held*, it was for the accused to establish, when his possession was found, that it came within the exception and that the possession was permitted by the rules made under the Act. ('87) 1887 Pun Re (Cr) No. 8 p. 11 (13, 14) (DB).

[3] The effect of Ss. 9 and 10 is that when once it is proved that an accused person had dealt with opium in any of the ways described in S. 9, the onus of proving that he had a right so to deal with it is thrown on the accused by S. 10. But the commission of an act which may be an offence must be proved before the presumption comes into play at all and it cannot, therefore, be used to establish that fact. ('10) 11 Cri L Jour 256 (257) : 37 Cal 581 (DB).

**18. Jurisdiction.** — [1] It is quite clear from S. 9 that the Court of Sessions has no jurisdiction in the case of offences under the section. The conviction must be before the Magistrate for a Magistrate and not the Judge of the Court of Session is the person empowered to pass sentence. A Magistrate taking cognizance of an offence has no power to commit to the Court of Session. ('97) 19 All 465 (465, 466) (DB).

[2] A Magistrate cannot be said to be personally interested in a case merely by reason of its being his duty as an officer under the Government to see that the law relating to the sale of opium is enforced and maintained in the part of the district of which he has charge. He can, therefore, exercise jurisdiction in respect of offences under the Opium Act. ('93) 15 All 192 (193) (FB).

[3] Where a Magistrate who is competent to take cognizance of an offence under S. 9 of the Opium Act, tries and convicts the accused of such offence, the mere fact that the seizure of the illicit opium and the arrest of the accused were made by officers of the opium department who were not authorised in that behalf under S. 14 of the Act would not vitiate the trial. The defect is merely an irregularity within S. 537 and, therefore, the conviction is not liable to be set aside if there is no failure of justice. 1952 Him Pra 74 (80) [AIR V 39] : 1952 Cri L Jour 1712.

[See also 1958 Cal 213 (217) [AIR V 45 C 50] : 1958 Cri L Jour 622 (DB). (The police cannot arrest persons suspected of offences under S. 9 (a) or 9 (c) of the Act without a warrant. They can do so under S. 14 or 15 of the Act.)]

**19. Punishment.**—[1] No hard and fast rule can be laid down as to what punishment would be proper in a case. The principle to be followed is that an offender ought not to be subjected to any punishment beyond what the public interest demands. ('92-96) 1 Upp Bur Rul 137 (143).

[2] The section provides for penalty for illegal cultivation of poppy etc. 1957 All 753 (754) [AIR V 44 C 204] : 1957 Cri L Jour 1199 (DB).

[3] Where the accused was a confirmed opiumsmoker from Burmese times—*Held* that some allowance might be made for his continuance of a habit which had recently been prohibited in respect of persons of his race by a different Government and a heavy penalty should not be imposed. ('92-96) 1 Upp Bur Rul 136 (136)\* ('92-96) 1 Upp Bur Rul 133 (135).

[4] When an accused person is convicted of an offence under the Opium Act under conditions which lead the Magistrate to conclude that he is engaged in traffic in opium on a large scale or in transporting opium in considerable quantities, a substantive term of imprisonment may appropriately be awarded in addition to a substantial fine. ('97-01) 1 Upp Bur Rul 241 (241).

[5] Where the sentence imposed upon an accused for offences under Ss. 9 (a) and 9 (b) of the Opium Act, is three months' imprisonment under each count to run consecutively, i. e., in all six months the sentence does not contravene the provisions of S. 71, I. P. Code, and is not illegal. 1958 S C 935 (937) [AIR V 45 C 131] : 1959 S C R 1162 : 1958 Cri L Jour 1432.

[6] When a substantial quantity of opium is recovered from the possession of the accused, a deterrent sentence is called for. ('53) 1953 Raj L W 48 (50).

[7] In view of S. 3 (26) read with S. 4 (1) General Clauses Act, sentence of imprisonment awarded under S. 9 (a) of the Act may be rigorous or simple. 1960 Orissa 139 (140) [AIR V 47 C 42] : 1960 Cri L Jour 1126 (DB)\* 1952 Madh B 17 (21) [AIR V 39] : 1952 Cri L J 246.

[8] The offences under S. 9 (a) and (b) of the Act are such that the offence of transporting opium would involve the offence of possessing the same and as such S. 71 I. P. C. would be applicable and the awarding of the single sentence cannot be objected to. 1955 Madh B 80 (80) [(S) AIR V 42 C 23] : 1955 Cri L Jour 815.

[9] Even though there may have been some conflict between S. 9 of the Central Act and S. 5 (a) of the Assam Act as to the measure of punishment, it is the latter Act which will prevail so far as that state is concerned. 1960 Assam 37 (38) [AIR V 47 C 11] : 11JR (1957) 9 Assam 389 : 1960 Cri L Jour 317 (DB). (Case under Assam Opium Prohibition Act (23 of 1947).)

[10] Section 9 (a) of the Act is in the same words as S. 8 (a) of the Rajasthan Opium Ordinance. Therefore, where on the date of the offence, the ordinance was not in force and had been repealed but the Opium Act of 1878 was in force on that date and the sentence passed did not exceed the sentence which could be awarded under S. 9 of the Act, the mistake of the magistrate in convicting the accused under the ordinance was immaterial and the conviction could not be set aside unless prejudice was shown to the accused. ('56) 1956 Raj L W 54 (55).

## 10. Presumption in prosecutions under section 9.

In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

### Section 9 (contd.)

**20. Obtaining excess opium by personation.**— [1] Where a person licensed to buy opium personates another and obtains from the licensed vendor more opium than he would have got if he had not so personated he cannot thereby be said to have acted dishonestly as there would have been no wrongful gain or loss had the opium been sold to him. He must, however, be deemed to have acted fraudulently as he deceived the vendor and thereby obtained an advantage which he would otherwise have not got. ('10) 11 Cri L Jour 686 (686) (Low Bur).

### Section 10 — Note 1

[1] The effect of Ss. 9 and 10 of the Opium Act, is that when once it is proved that an accused person has dealt with opium in any of the ways described in section 9, the onus of proving that he had a right so to deal with it is thrown on him by section 10. But the commission of an act must be proved before the presumption contemplated by S. 10 comes into play at all and so the presumption cannot be used to establish the fact. So a defective evidence of a sale cannot be supplemented by the presumption raised by S. 10 and hence the conviction for illicit sale is bad. ('10) 37 Cal 581 (584) (DB)\* 1951 Him Pra 28 (30) [AIR V 38 C 7] : 1952 Cri L Jour 267\* 1949 Assam 73 (74) [AIR V 36 C 35] : 51 Cri L Jour 51 (DB).

[2] Section 10 of the Opium Act provides, that opium in respect of which it is to be presumed, that the accused has committed an offence, must be opium in the possession of the accused. The possession need not be to the knowledge of the accused. A penal section should be read plainly. S. 10 contains no reservation in favour of common carriers and hence a common carrier is not exempt from the provisions of S. 10, which is of a character that is exceptional, but by no means uncommon. ('04) 8 Cal W N 349 (351, 352) (DB).

[3] Possession implies knowledge, and there would be no possession when there is no knowledge on the part of the ostensible occupant of the room or cabin, as the case may be; possession without knowledge can hardly have been meant since in that case the element of criminal intention or knowledge would be entirely wanting. It would be quite unsafe to conclude that the accused had the knowledge which is necessary to convict him, merely on grave suspicion. Onus of proving that knowledge is on the prosecution. The bare fact that the opium was found in the accused's cabin, without any extraneous evidence, establishing connection between him and the opium does not discharge that onus. 1930 Cal 668 (669, 670, 671) [AIR V 17] : 32 Cri L Jour 245 (DB).

[4] The term "possession" implies knowledge on the part of the possessor and before the accused is required to account for opium there must be proof that such opium has been in his possession or under his control. 1929 Rang 121 (121) [A I R V 16] : 7 Rang 11 : 30 Cri L Jour 753.

[5] The possession which the law intends to punish is criminal or guilty possession. Where an accused is found in illegal possession of opium under S. 9 his guilty possession can be prima facie presumed, if the opium was found in that portion of a house, which he exclusively occupied. ('73) Oudh S C 236 (479).

[6] Although S. 10 casts upon accused persons the onus of satisfactorily accounting for opium found in their possession. Magistrates must be careful to note firstly that the presumption against the accused person is only a presumption and may be rebutted and secondly that possession must be proved. Opium is frequently maliciously placed in or upon a person's premises by an enemy who then brings down the police to the spot and opium is thus found. ('73) Oudh S C 161 (194).

[7] If a person is accused of illegally possessing even a quantity permitted by R. 3 of Opium Rules, the burden of proof that he got it in a lawful manner, rests upon him, and his failure in doing so makes him liable to be prosecuted under S. 9 of the Opium Act. ('05) 1 Weir 832 (832).

[8] Accused was tried for illegal possession of opium found on him on 18-5-09. He stated that he had purchased it from a licensed vendor. This fact was accepted by the prosecution but they alleged that the date of his purchase did not agree with this explanation—Held that it lay upon the prosecution to prove the date, and only then if the accused failed to satisfactorily account for the large quantity of opium still in his possession on the date of his arrest could any presumption be drawn against him under S. 10. ('10) 11 Cri L Jour 658 (659) (DB) (Low Bur). ('07-08) 4 Low Bur Rul 314. *Considered.*

[9] Section 10 expressly throws upon the accused the burden to account for opium in respect of which he is alleged to have committed an offence, so that failure of the magistrate to examine the accused at greater length, to elicit any explanation from him cannot vitiate his conviction. A person is not to account for any opium regarding which there is no prima facie evidence of possession and where other persons than the accused had access to the place where the opium in question was kept, no presumption can be raised that he was in possession of it. 1944 Oudh 297 (298) [AIR V 31] : 46 Cri L Jour 364.

[10] The Act carefully restricts the powers of the officers appointed to carry out the law relating to opium and safe-guards their exercise. The intention of the law in the enact-



**11. Confiscation of opium.**

In any case in which an offence under section 9 has been committed,—

- \*[\* \* \* \* \*]
- \*[(a)] the opium in respect of which any offence under the same section has been committed,
- \*[(b)] where in the case of an offence under clause <sup>b</sup>[(b) or (c)] of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,
- \*[(c)] where, in the case of an offence under clause <sup>a</sup>[(d)] of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

[a] Sub-clause (a), which read, "(a) the poppy so cultivated", was omitted and the subsequent sub-clauses were relettered, by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II. [b] Substituted for "(d) or (e)", *ibid.* [c] Substituted for "(f)", *ibid.*

**Section 10 — Note 1 (contd.)**

ment of S. 10 was that when after these precautions a person is charged with committing an offence under S. 9, the burden of showing that he is not responsible for the opium found should be cast upon him. But before imposing the presumption and requiring the accused person to prove that the opium is not opium in respect of which he had committed an offence the law provides that an opportunity shall be given for accounting for opium and it is only when he is unable to account for it satisfactorily that the accused is called upon to prove the contrary. If the accused is unable to account satisfactorily for opium found the law presumes until contrary is proved that the possession is with knowledge and assent so as to constitute an offence. (192-96) 1 Upp Bur Rul 139 (141, 142).

[11] Where the opium is recovered on search from a car during transport, all the occupants of the car must be presumed to commit an offence in respect of that opium under the Act unless they can show that they had a right to transport it in the manner in which they were doing. 1958 Madh Pra 285 (286) [A I R V 45 C 104] : 1958 Cri L Jour 1194.

[12] Where conscious possession is not proved no presumption arises in favour of the prosecution. The burden of proving conscious possession on the part of the accused remains on the prosecution and is not shifted to the accused by anything contained in the section. 1950 Assam 152 (153) [A I R V 37 C 55] : 1LR (1950) 2 Assam 333 : 51 Cri L Jour 973 (DB).

**Section 11 — Note 1**

[1] Section 11 does not authorise the confiscation of every receptacle such as a conveyance in which a small quantity of opium may happen to be found. The liability arises only

from the owner of such conveyance using it for the purpose of transporting opium. A person cannot be made liable because his servant uses his private carriage for his stock of opium. (11) 12 Cri L Jour 103 (104) (DB) (Cal).

[2] An accused hired a cart and carried with him opium in the cart, without the cartier's knowledge. On the way accused was arrested and convicted of smuggling opium. Carter's cart and bullocks were also confiscated — Held that such a confiscation was illegal in view of the cartier's innocence — Held also that no appeal lies from an order of confiscation made under S. 11 of the Opium Act. (105) 1 Weir 835 (835).

[3] Improper conduct of owner of the vessel — Neither imputed nor proved — He should be given opportunity to be heard before confiscation of vessel. 1925 Cal 1021 (1021) [A I R V 12] : 27 Cri L Jour 127 (DB).

[4] An order was made under S. 11 of the Opium Act confiscating a boat in which some opium had been found — Held that the order should not have been made without giving the owner of the boat an opportunity of being heard. (11) 12 Cri L Jour 103 (104) (DB) (Cal).

[5] An order confiscating the conveyance under S. 11 should not be passed without giving an opportunity to the alleged owner to prove that he did not know and had no reason to believe that opium was transported in the conveyance in question. 1921 Pat 232 (232) [AIR V 8].

[6] A conveyance ought not to be confiscated unless the owner knew or had reason to believe that his vehicle was likely to be used for the purpose of transporting contraband goods. 1942 Mad 724 (725) [A I R V 29] : 44 Cri L Jour 136.

## STATE AMENDMENTS

## MADHYA PRADESH

In its application to the State of Madhya Pradesh, for section 11 *substitute* the following, namely,—

"11. *Confiscation of opium*.—In any case in which the offence under sections 9, 9A, 9B, 9C, 9D, 9E, 9F and 9G has been committed, the property detailed herein below shall be confiscated—

- (a) the opium in respect of which any offence has been committed ;
- (b) where, in the case of an offence relating to the transport, import or export, of opium the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium he is transporting, importing or exporting ;
- (c) where, in the case of an offence relating to the sale of opium, the offender has in his possession any opium other than the opium in respect of which the offence has been committed the whole of such other opium ;
- (d) the receptacles, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the receptacles or package in which such opium may be concealed, and the animals, carts, vessels, rafts and conveyances used in carrying it."

—M. B. Act XV of 1955, S. 5 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

## WEST BENGAL

The section has been *amended* in its application to Bengal by Bengal Act V of 1933, S. 6. The section as amended by the said Act reads as follows :—

"11. *Confiscation of opium*. — In any case in which an offence under sections 9, 9A, 9B, 9C, 9D, 9E, 9F or 9G has been committed,—

- \*                      \*                      \*                      \*                      \*
- (a) the opium in respect of which any offence has been committed,
  - (b) where, in the case of an offence relating to the transport, import or export of opium, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,
  - (c) where, in the case of an offence relating to the sale of opium, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,
- shall be liable to confiscation.

The receptacles, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the receptacle or package in which such opium may be concealed, and the animals, carts, vessels, rafts and conveyances used in carrying it, shall likewise be liable to confiscation."

**12. Order of confiscation by whom to be made.**

When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the State Government in this behalf, either personally or in right of his office, who may order such confiscation : Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the

**Section 12 — Note 1**

[1] The jurisdiction conferred on the Magistrate under S. 12 is a special jurisdiction and is not limited, in any way, by the Code of Criminal Procedure. Under the section a Magistrate, who has power to order confiscation has also the power to give the owner of

the thing liable to be confiscated an option to pay in lieu of confiscation such a fine as the officer thinks fit even exceeding his jurisdiction under Cr. P. Code. 1921 Pat 232 (232) [AIR V 8].



persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

## STATE AMENDMENTS

## MADHYA PRADESH

In section 12, *omit* the first and the second paragraph.

—M. B. Act XV of 1955, S. 6 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

## WEST BENGAL

For the word "Magistrate" wherever it occurs, the word "Court" shall be *substituted*.

—Beng. Act V of 1933, S. 7.

### 13. Power to make rules regarding disposal of things confiscated, and rewards.

The <sup>a</sup>[State Government] may, <sup>a</sup>[\* \* \*] from time to time, by notification in the Official Gazette, make rules consistent with this Act to regulate—

(a) the disposal of all things confiscated under this Act ; and

(b) the rewards to be paid to officers and informers <sup>b</sup>[\* \* \*].

[a] The words "with the previous sanction of the Governor-General in Council" were *omitted* by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I. [b] The words "out of the proceeds of fines and confiscation under this Act" were *omitted* by A. O., 1937 [1-4-1937].

## STATE AMENDMENT

## SECTION 13A

## MADHYA PRADESH

After section 13, *insert* the following new section, namely,—

"13A. *Power to obtain information.*—(1) The State Government or any officer specially empowered by it in this behalf, may by order require any person to furnish to any specified authority or person any such information in his possession concerning any opium as may be specified in the order.

(2) If any person fails to furnish any information in compliance with the order made under sub-section (1) or furnishes false information, he shall on conviction be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees."

—M. B. Act XV of 1955, S. 7 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

### 14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

<sup>a</sup>[Any officer of the department of Central Excise, Narcotics, Drugs Control, Customs, Revenue, Police or Excise, superior in rank to a peon or constable, authorized in this behalf by the Central Government or the State Government,] who has reason to believe, from personal knowledge or from information given

## Section 13 — Note 1

[1] There is no authority conferred by the Opium Act upon a Magistrate to distribute fines among persons who may have been concerned in the detection of offences. R. 67 made by the Local Government under S. 13, which purports to authorize Magistrates to grant awards is *ultra vires* in so far as it purports to regulate the conduct of the Magistrates and authorise the grant of rewards to persons other than officers and informers. ('94) 1894 Pun Re (Cr) No. 13 p. 40 (41) (DB).

## Section 14 — Note 1

[1] Section 16 of the Opium Act lays down that searches under Ss. 14 and 15 of the Act shall be made in accordance with the provisions laid down in Criminal Procedure Code. But search to which S. 38 of the Excise Act exclusively applies are not governed by the provisions of the Code of Criminal Procedure. ('08) 7 Cri L Jour 87 (88) : 4 Low Bur Rul 121.

[2] Section 14 provides for entry, arrest and seizure and does not provide for penalty. 1957

All 753 (754) [A 1 R V 44 C 204] : 1957 Cri L Jour 1199.

[See also 1952 Him Pra 74 (78) [AIR V 39] : 1952 Cri L Jour 1712 (The officers of opium department are not empowered to enter, arrest and seize the opium under S. 14, opium Act as applied in Himachal Pradesh.)]

[3] An entry by an Excise Officer into a building vessel or enclosed place, to be justifiable, must be authorised under either section 14 or S. 19 of the Act. ('09) 10 Cri L Jour 85 (86) : 5 Low Bur Rul 56 (FB).

[4] An offence punishable under S. 9 is non-cognizable one. Where a police officer makes a search in the house of a person without an order of Magistrate the search is illegal. ('97) 24 Cal 691 (696) (DB).

[5] The excise officers investigating offences are virtually deemed to be police officers. 1931 Cal 350 (352) [A 1 R V 18] : 32 Cri L Jour 640 : 58 Cal 1260 (DB).

[6] Mere illegality in the exercise of the right of search under the Opium Act is not in itself a sufficient ground for setting aside a conviction under the Act. 1919 Pat 488 (489)

by any person and taken down in writing, that opium liable to confiscation under this Act is [\* \* \*] kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

- (a) enter into any such building, vessel or place ;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry ;
- (c) seize such opium [\* \* \*] and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ; and
- (d) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

[a] *Substituted* for "Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the State Government in this behalf, and", by the Opium Laws (Amendment) Act, 1957 (LII of 1957), S. 4 [21-12-1957]. [b] The word "manufactured" was *omitted* by the Dangerous Drugs Act, 1930 (II of 1930), S. 40 and Sch. II. [c] The words "and all materials used in the manufacture thereof" were *omitted*, *ibid*.

#### STATE AMENDMENTS

##### ASSAM

The section has been *amended* in its application to the State of Assam by Assam Act I of 1933.

##### MADHYA PRADESH

In its application to the State of Madhya Pradesh, in S. 14 —

- (a) for the words "any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or a constable" *substitute* the words "any officer not below the rank of a Sub-Inspector of the Department of Excise, Customs, Police or Opium, and any officer, not below the rank of a Naib Tahsildar, of the Revenue Department" ;
- (b) for the words "between sunset and sunrise" *substitute* the words "at any time by day or night" ;

#### Section 14 — Note 1 (*contd.*)

[A I R V 6] : 20 Cri L Jour 745 (DB) \* 1952 Him-Pra 74 (80) [AIR V 39] : 1952 Cri L Jour 1712\*1950 All 436 (437) [A I R V 37 C 166] : 51 Cri L Jour 1152.

[7] Where a quantity of opium was discovered on the premises of a person by an unauthorised and illegal search made at midnight—*Held* that it was immaterial how the opium was discovered. An illegal search did not affect the admissibility of discovery made thereby. ('06) 4 Cri L Jour 290 (291) : 1908 Pun Re (Cr) No. 11 (DB) \* ('13) 35 All 358 (360) (DB).

[8] Excise Sub-Inspector entering the premises after sunset in contravention of S. 14 of the Opium Act—Sub-Inspector not delivering up opium found to the nearest Police Station, in spite of the peremptory provisions of S. 20 of the Opium Act—*Held* conviction could not stand—Where the proceedings bristle with irregularities it is for the prosecution to show that the accused was not prejudiced thereby. 1919 Pat 452 (453, 454) [AIR V 6] : 20 Cri L Jour 742.

[9] Unless an Excise Inspector had been authorized to enter a building and search, unless he had reduced to writing the information received by him as required by S. 14, he would not be acting in the lawful discharge of a duty imposed on him by law as an Inspector in attempting to make a search and an assault committed on him would not be an assault committed on him in the execution of

his duty and therefore, the person assaulting such Inspector cannot be convicted under S. 353, Penal Code. 1933 Sind 174 (175, 176) [AIR V 20] : 27 Sind L R 209 : 34 Cri L Jour 1147 (DB).

[10] An Excise Chaprasi has no authority to ascend the stairs of a person's house to see if such person was not manufacturing *chandru*. This power is given to officers of the Excise Department superior in rank to a peon who may be so authorised by the local Government. ('04) 1904 Pun L R No. 105, p. 390 (392).

[11] The provisions of S. 103 of the Cr. P. Code, are applicable to searches made under S. 14 of the Opium Act, but not to searches in an open place under the provisions of S. 15. 1927 Rang 170 (170) [A I R V 14] : 28 Cri L Jour 372.

[12] Under Ss. 14, 15 and 16, it is only search that has to be carried out in accordance with the rules for searches under Criminal P. C. and the rules have no bearing on seizures. 1930 Rang 49 (50) [A I R V 17] : 7 Rang 771 : 31 Cri L Jour 303.

[13] A Magistrate who has the power to issue a search warrant has the power himself to search. The defect in the mode of search or seizure would be immaterial unless such irregularity has occasioned a failure of justice. ('84) 1884 All W N 213 (214).

[14] For a conviction under the Opium Act it matters not so far as the legality of a conviction goes, by whom the accused was arrest-

(c) in clause (c) after the words "relating to opium" insert the words "and also any other thing or document which throws or is likely to throw any light on the alleged offence".

—M. B. Act XV of 1955, S. 8 [17-8-1955] read with M. P. Act XXIII of 1958, S. 3.

## MADRAS

After the word "Excise" insert "Prohibition" and after the word "peon" insert "guard".

—Mad. Act XXXIV of 1947, S. 2 [3-2-1948].

## WEST BENGAL

(1) For the words "Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or a constable", the following shall be substituted, namely :—

"Any officer not below the rank of a sub-Inspector of the Department of Excise, Police and any officer of the Customs, Salt or Revenue Department."

(2) For the words "between sunrise and sunset" the words at any time by day or night," shall be substituted ; and

(3) In clause (c) after the words "relating to opium" the following shall be inserted, namely :—"and also any other thing or document which throws or is likely to throw any light on the alleged offence."—Beng. Act V of 1933, section 8.

## 15. Power to seize opium in open places.

Any officer of any of the said departments may—

(a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ;

Power to detain, search and arrest.

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

### Section 14 — Note 1 (contd.)

ed or found in possession. ('97-'01) 1 Upp Bur Rul 239 (239, 240).

[15] Though in view of the measure of the penalty prescribed for an offence under Ss. 9 (a) and 9 (c) of the Opium Act or a criminal conspiracy to commit the same, the police cannot, under the second schedule to the Cr. P. C. arrest persons without warrant, they can do so under Ss. 14 and 15 of the Opium Act itself in the circumstances stated in those sections. 1958 Cal 213 (217) [AIR V 45 C 50] ; 1958 Cri L Jour 622 (DB).

[16] The provisions of Ss. 14, 15 and 19 are mutually exclusive and not cumulative. In other words, each is self sufficient, so that in any given case the one or the other, but no two, of them need be applicable. But there is one thing common to all the said provisions by virtue of S. 16 and the IIInd Paragraph of S. 19, and that is that the provisions of Cr. P. C. apply to all searches under Ss. 14 and 15 and to the execution of warrants under S. 19. 1952 Him-Pra 74 (77) [AIR V 39] ; 1952 Cri L Jour 1712.

[17] Sections 14 to 20 of the Opium Act make it clear that the offences under that Act are to be investigated, inquired into and tried in accordance with the provisions of the Criminal P. C. The Opium Act does not lay down any scheme of procedure for the investigation and trial of offences under the Act. There is also no section in the Act prohibiting a Magistrate from taking cognizance of any offence under the Act except on a charge sheet presented by the police in accordance with the provisions of Cr. P. C. 1952 Madh-B 17 (21) [AIR V 39] ; 1952 Cri L Jour

246\*1952 Him-Pra 74 (79) [AIR V 39] ; 1952 Cri L Jour 1712.

[18] Opium is not covered by the U. P. Excise Act, the recovery of opium is governed by the Opium Act and the U. P. Opium Smoking Act, neither of which empowers an Excise Inspector to search a house without a search warrant. Hence he is not competent to search a house to recover crude opium without obtaining a search warrant from a Magistrate. 1955 NUC (All) 5499 [AIR V 42].

### Section 15 — Note 1

[1] Sections 14 and 15 are mutually exclusive and are not cumulative provisions. There is only one feature which is common to both and that is the search under either of them must be made in accordance with the provisions of the Criminal Procedure Code. 1952 Him-Pra 74 (77) [AIR V 39] ; 1952 Cri L Jour 1712.

[2] Opium which is being carried about from place to place in a boat is undoubtedly "in transit" for the requirements of S. 15 of the Opium Act. Even if the boat be temporarily anchored S. 15 does not authorise an officer to enter a boat without the permission of the person in charge of it. In order to justify entry and search of a boat between sunset and sunrise against the will of the person in charge, an officer must first secure a warrant from another officer authorised in that behalf under S. 10 of the Act. ('09) 10 Cri L Jour 85 (86) ; 5 Low Bur Rul 56 (FB).

[3] The provision of S. 15 (b) imply that when opium is found, persons other than the person actually in possession may be called

## STATE AMENDMENTS

## ASSAM

The section has been amended in its application to the State of Assam by Assam Act I of 1933.

## MADHYA PRADESH

In its application to the State of Madhya Pradesh, *add* the following words to clause (a) of section 15, namely, "and also any other thing or document which throws or is likely to throw any light on the alleged offence; and".

— M. B. Act XV of 1955, S. 9 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

## WEST BENGAL

(1) After the word "departments," the words "or any officer of the Department of Posts and Telegraphs or of any railway or steamer administration controlled by any Government or by a railway or steamship company such officer being duly authorised in this behalf by the State Government" shall be *inserted*; and

(2) to clause (a) the following shall be *added*, namely:—

"and also any other thing or document which throws or is likely to throw any light on the alleged offence; and."

— Beng. Act V of 1933, S. 9.

## 16. Searches how made.

All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.\*

[a] See now the Code of Criminal Procedure, 1898 (V of 1898).

## Section 15 — Note 1 (contd.)

upon to answer it. ('92-96) 1 Upp Bur Rul 139 (141).

[4] Under Ss. 14, 15 and 16 it is only search that has to be carried out in accordance with the rules for searches under Cr. P. Code, and the rules have no bearing on seizures. 1930 Rang 49 (50) [A I R V 17] : 7 Rang 771 : 31 Cri L Jour 303.

[5] Section 103 of the Criminal P. C. does not apply to searches of persons made under cl. (b) of this section. 1941 Rang 333 (334) [A I R V 28] : 1941 Rang L R 552 : 43 Cri L Jour 217\*1927 Rang 170 (170) [A I R V 14] : 28 Cri L Jour 372.

[6] An Excise Officer acting under S. 15, Opium Act has lawful authority to arrest a person who sells a black substance (not opium) alleging it to be opium though its possession is not an offence under S. 9. Consequently the escape of such a person as well as his rescue from the custody of the Excise Officer are offences under Ss. 224 and 225, Penal Code. 1917 Cal 426 (427) [AIR V 4] : 43 Cal 1161 : 17 Cri L Jour 379 (DB).

[7] In view of the measure of penalty prescribed under section 9 as it stands amended in Bengal for an offence under cls. (a) and (c) of that section or a criminal conspiracy to commit the same, the police officer cannot arrest persons suspected of such offences without a warrant under schedule 2 of the Criminal Procedure Code. But there is no such bar to their arresting without a warrant under sections 14 and 15 where the circumstances stated in these sections are present. 1958 Cal 213 (217) [AIR V 45 C 50] : 1958 Cri L Jour 622.

[8] Irregularity in the search does not necessarily invalidate the proceedings under the Act. It always affords ground for scrutiny, and if after careful scrutiny the Court comes to the conclusion that an excisable article was recovered from the possession of the accused then the conviction is a sound one. 1941 Rang 333 (333) [A I R V 28] : 1941 Rang L R 552 : 43 Cri L Jour 217.

[9] The Excise Officers investigating offences are virtually deemed to be police officers. On principle also the position of a police officer cannot be distinguished from that of an excise officer with regard to an offence under the Excise Act, because an Excise Officer is also interested in the conviction of the accused and in a position to dominate him. Therefore a confession made before an Excise Officer during investigation is inadmissible in evidence under S. 25, Evidence Act. 1931 Cal 350 (352) [A I R V 18] : 58 Cal 1260 : 32 Cri L Jour 640 (DB).

## Section 16 — Note 1

[1] Provisions of S. 103, Criminal P. C. not observed in conducting search under Opium Act of premises occupied by accused — Residents of locality not called to be present at search — List of property found not made — Opium found in accused's house — Held irregularity of search might impair value of evidence regarding discovery of opium. ('92-96) 1 Upp Bur Rul 135 (135).

[2] Mere illegality in the exercise of the right of search under the Opium Act is not in itself a sufficient ground for setting aside a conviction under the Act. 1919 Pat 488 (489) [AIR V 6] : 20 Cri L Jour 745 (DB).

[3] Witnesses present at time of search deposing that opium was found in accused's house — Witnesses living two or three miles away from accused's village — Mere fact that witnesses are not from immediate vicinity cannot justify Court in rejecting their evidence. 1937 Rang 434 (436) [A I R V 24] : 39 Cri L Jour 278.

[4] It is objectionable to be constantly calling the same person to witness a search as it may prejudice the mind of the trying magistrate. When searches are undertaken under the Opium Act respectable neighbours should be called in to witness the search. The fact that witnesses were not those contemplated by Opium Act does not otherwise affect the con-

**17. Officers to assist each other.**

The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

**STATE AMENDMENTS****MADHYA PRADESH**

Same as that of West Bengal

— M. B. Act XV of 1955, S. 10 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

**WEST BENGAL**

For the words "the officers of the several departments mentioned in section 14" the words "the officers referred to in sections 14 and 15" shall be *substituted*.

— Beng. Act V of 1933, S. 10.

**18. Vexatious entries, searches, seizures and arrests.**

Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

**STATE AMENDMENT****WEST BENGAL**

For the words "Any Officer of any of the said departments who" the words "If any of the said officers" shall be *substituted*; and before the word "shall" the word "he" shall be *inserted*.

— Beng. Act V of 1933, S. 11.

**19. Issue of warrants.**

The Collector of the district, Deputy Commissioner or other officer authorized by the <sup>A</sup>[State Government] in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.<sup>A</sup>

[a] See now the Code of Criminal Procedure, 1898 (Act V of 1898).

**20. Disposal of person arrested or thing seized.**

Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

**Section 16 — Note 1 (contd.)**

viction. ('08) 7 Cri L Jour 87 (88) : 4 Low Bur Rul 121.

[5] The Opium Act provides specifically for the application of the provisions of Criminal Procedure Code for carrying out search, seizure, arrest etc. 1952 Him Pra 74 (79) [AIR V 39] : 1952 Cri L Jour 1712.

**Section 19 — Note 1**

[1] By virtue of S. 19, Para. 2 the provisions of Criminal P. C. apply to all searches under Ss. 14 and 15 and to the execution of warrants

under S. 19. 1952 Him Pra 74 (77) [AIR V 39] : 1952 Cri L Jour 1712.

**Section 20 — Note 1**

[1] Section 20 does not lay down how the person and the thing are to be disposed of and hence their disposal should be in accordance with the provisions of the Criminal Procedure Code. 1952 Him Pra 74 (78) [AIR V 39] : 1952 Cri L Jour 1712 + 1958 Madh Pra 285 (285) [AIR V 45 C 104] : 1958 Cri L Jour 1104.

## STATE AMENDMENTS

## ASSAM

For section 20, new sections were substituted by Assam Act I of 1933.

## MADHYA PRADESH

In its application to the State of Madhya Pradesh, for section 20 the following sections shall be substituted, namely,—

"20. *Powers of certain officers of Excise Department with regard to offences.*— Every officer of the Department of Excise not below the rank of a Sub-Inspector or any other officer of the Customs, Police or Revenue Department specially empowered in this behalf by the State Government under a notification in the Official Gazette shall investigate offences and grant bail to the persons arrested under this Act.

20A. (1) When any person is arrested or any opium or other thing is seized under the provisions of this Act, the person making the arrest or seizure shall if he is an officer of the Excise, Customs, Police or Revenue Department, forthwith forward the person arrested or the thing seized to the nearest officer of the Excise Department empowered under section 20, unless he is himself so empowered.

(2) When any person is brought in custody before an officer empowered under section 20, or when such officer has himself arrested or procured the appearance by summons under section 20D of any person, he shall make such investigation as seems to him necessary, and shall either release such person or admit him to bail to appear, or if bail is not given, produce him or cause the officer-in-charge of the nearest police station to produce him before a Magistrate having jurisdiction in the case :

Provided that if the investigation is not completed within twenty-four hours of the arrest, the said officer may take bail with or without security from the person arrested to appear on any subsequent date before himself and shall, if such bail is not given, forthwith forward the arrested person to the nearest Magistrate with a report of the case and a request to detain him in custody for such period not exceeding fourteen days as may be necessary to complete the investigation and to order his production before the said officer when necessary, for such investigation.

(3) The Magistrate to whom an arrested person is so forwarded, whether he has or has not jurisdiction to try the case, may, by order in writing stating the reasons therefor, authorise the detention of the arrested person in default of bail in such custody as he thinks fit for a term not exceeding fourteen days in the whole.

20B. *Power of investigating officer to summon witnesses.*— (1) An officer empowered under section 20 may summon any person to appear before himself to give evidence or to produce any document necessary for the purposes of an investigation.

(2) Such summons shall state whether the person summoned is required to give evidence or to produce a document or both, and shall specify a time and place for appearance.

(3) It shall be lawful for such officer instead of issuing a summons to proceed to the residence of any person whom by reason of sickness or other infirmity or by reason of rank or sex it may not seem proper to summon, and may require him to answer such questions as may be necessary for the purpose of the investigation.

(4) Any person examined in accordance with the provisions of sub-section (1) or sub-section (3) shall be bound to answer all questions relating to the investigations put to him by such officer, other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(5) The provision of section 162 of the Code of Criminal Procedure, 1898, shall apply to the statements made by any person under this section.

(6) No oaths shall be administered to any such person.

20C. *Power of investigating officer to release accused when evidence deficient.*— If upon an investigation under this Act it appears to the officer-in-charge of such investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall release him on his executing a bond with or without sureties as such officer may direct to appear, if and when so required before Magistrate having jurisdiction.

20D. *Power of certain officer to summon suspected persons.*— When any officer of the Excise Department empowered under section 20 to investigate offences has reasonable grounds for believing that any person has committed an offence under this Act, he may, after recording his reasons in writing and either with or without previous investigation summon such person to appear before him.

20E. *Summoning witnesses, etc., how to be made.*— The provisions of the Code of Criminal Procedure, 1898 relating to summons and compelling the appearance of persons summoned and the production of documents shall apply as far as may be, in the case of any summons issued by an officer empowered to issue a summons under this Act.

20F. *Procedure in case of forfeiture of bond.*— When it appears to an officer empowered under section 20 that a bond for appearance before himself has been forfeited, he shall forward the bond to the Magistrate having jurisdiction to try the offence of which the

person bailed was accused together with a report in writing giving the reasons for his belief and the relevant documents and the Magistrate shall deal with the matter in the manner provided by the Code of Criminal Procedure, 1898, for the forfeiture of bonds for appearance before his own Court.

**20G. Jurisdiction of Magistrate on receipt of report from Excise Officer.**—When an officer empowered under section 20 to investigate offences or grant bail forwards in custody any person accused of an offence under this Act to the Magistrate, having jurisdiction to try the case, or admits any such person to bail to appear before such Magistrate, he shall submit a report setting forth the name of the accused person and the nature of the offence with which he was charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner as if such report is a report in writing made by a police officer under clause (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898.

**20H. Attendance of witnesses before Magistrate.**—An officer acting under the provisions of section 20G shall have all the powers conferred by the Code of Criminal Procedure, 1898 on an officer-in-charge of a police station for the purpose of causing the appearance before the Magistrate of persons acquainted with the circumstances of the case.

**20-I. Police to take charge of articles seized.**—All officers-in-charge of police station shall take charge of and keep in safe custody, pending the order of a Magistrate or an investigating officer, all articles seized under this Act which may be delivered to them, and shall allow any investigating officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer-in-charge of the police station and with the seal of the accused or his agent, if he is available. All such packets of sample shall be signed by the accused or his agent, if he is available."

— M. B. Act XV of 1955, S. 11 [17-6-1955] read with M. P. Act XXIII of 1958, S. 3.

## MADRAS

In section 20, after the words "nearest police-station" insert "or to the nearest officer of the Prohibition Department empowered under section 20-A."

After section 20, insert the following:—

**"20A. Power to invest Prohibition Officers with certain powers.**—The State Government may, by notification in the Official Gazette, invest any officer of the Prohibition Department, or every officer belonging to any specified class in that Department, with the powers of an officer in charge of a police-station for the investigation of offences under this Act."

—Mad. Act XXXII of 1951, Ss. 3 and 4 [23-10-1951].

## ORISSA

For section 20 the following sections shall be substituted, namely:—

**"20. Power of State Government to authorise officers to investigate offences and grant bail.**—(1) The State Government may, by notification in the Gazette, authorise any class of officers of the Excise or Police Department to investigate offences, and to grant bail to persons arrested, under this Act.

**Power to determine form of bail bond.**—(2) The State Government may, from time to time, determine the form of the bail bond to be used.

**20A. Persons arrested or article seized how to be dealt with.**—(1) When any person is arrested or any opium or other thing is seized under the provisions of this Act, the person making the arrest or seizure shall, if he is an officer of the Excise or Police Department, forthwith forward the person arrested or the thing seized to the nearest officer of his department empowered under section 20 unless he is himself so empowered.

(2) When such arrest or seizure is made by any officer referred to in section 14 or section 15 other than an officer of the Excise or Police Department, he shall forthwith forward the person arrested or the thing seized to the nearest officer of the Excise or Police Department empowered under section 20 and having jurisdiction in the case.

(3) When any person is brought in custody before an officer empowered under section 20 or when such officer has himself arrested or procured the appearance by summons under section 20D of any person, he shall make such investigation as seems to him necessary, and shall either release such person or admit him to bail to appear, or if bail is not given,

### Section 20-A (Madras) — Note 1

[1] An Excise Officer invested with the powers of an Officer in charge of a police station for investigation of offences under S. 20-A is a "Police Officer" coming within the purview of S. 25 of the Evidence Act and S. 162, Criminal P. C. 1953 Mad 917 (924)

[AIR V 40 C 361] : ILR (1954) Mad 57 : 1953 Cri L Jour 1693 (DB). (Hence confession made to him is inadmissible under S. 25 of the Evidence Act ; and a statement made to the officer under S. 162, Criminal P. C. can be used only according to that section.)



produce him or cause the officer-in-charge of the nearest police-station to produce him before a Magistrate having jurisdiction in the case :

Provided that if the investigation is not completed within twenty-four hours of the arrest, the said officer may take bail with or without security from the person arrested to appear on any subsequent date before himself, and shall, if such bail is not given, forthwith forward the arrested person to the nearest Magistrate with a report of the case, and a request to detain him in custody for such period not exceeding fourteen days as may be necessary to complete the investigation and to order his production before the said officer when necessary for such investigation.

(4) The Magistrate to whom an arrested person is so forwarded, whether he has or has not jurisdiction to try the case, may by order in writing stating the reason therefor, authorise the detention of the arrested person in default of bail in such custody as he thinks fit for a term not exceeding fourteen days in the whole.

**20B. Power of investigating officer to summon witnesses or examine them otherwise.—**

(1) An officer empowered under section 20 may summon any person to appear before himself to give evidence, or to produce any document, necessary for the purposes of investigation.

(2) Such summons shall state whether the person summoned is required to give evidence or to produce a document or both, and shall specify a time and place for appearance.

(3) It shall be lawful for such officer, instead of issuing a summons, to proceed to the residence of any person whom by reason of sickness or other infirmity or by reason of rank or sex it may not seem proper to summon, and then require him to answer such questions as may be necessary for the purposes of the investigation. It shall also be lawful for such officer to examine any person who may appear before him to give evidence or to produce any document necessary for the purposes of the investigation, although the said person appears voluntarily and no summons has been issued to him.

(4) Any person examined in accordance with the provisions of sub-section (1) or sub-section (3) shall be bound to answer all questions relating to the investigation put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(5) The provisions of section 162 of the Code of Criminal Procedure, 1898, shall apply to the statements made by any person under this section. No oaths shall be administered to any such person.

**20C. Power of investigating officer to release accused when evidence deficient.—**If, upon an investigation under this Act, it appears to the officer-in-charge of such investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate such officer shall release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and, when so required, before a Magistrate for trial.

**20D. Power of certain officers to summon suspected persons.—**When any officer of the Excise or Police Department, not below such rank as may be prescribed by the Provincial Government by notification in the Gazette, has reasonable grounds for believing that any person has committed an offence under this Act, he may, after recording his reasons in writing, and, either with or without previous investigation, summon such person to appear before him.

**20E. Summoning of witnesses etc., how to be made.—**The provisions of the Code of Criminal Procedure, 1898, relating to summonses and compelling the appearance of persons summoned and the production of documents, shall apply, as far as may be, in the case of any summons issued by an officer of the Excise or Police Department, empowered to issue a summons under this Act.

**20F. Procedure in case of forfeiture of bond.—**When it appears to an officer of the Excise or Police Department that a bond for appearance before himself has been forfeited, he shall forward the bond to the Magistrate having jurisdiction to try the offence of which the person bailed was accused, and the Magistrate shall deal with the matter in the manner provided by the Code of Criminal Procedure, 1898, for the forfeiture of bonds for appearance before his own Court.

**20G. Jurisdiction of Magistrate on receipt of report from Excise Officer or Police Officer.—**When an officer of the Excise or Police Department forwards in custody any person accused of an offence under this Act, to the Magistrate having jurisdiction to try the case, or admits any such person to bail to appear before such Magistrate, he shall submit a report setting forth the name of the accused person and the nature of the offence with which he was charged and the names of the persons who appear to be acquainted

#### Section 20-B (Orissa) — Note 1

[1] The bar of section 162 of the Criminal Procedure Code applies to statements whether confessional or otherwise, made by a person accused of an offence under the Opium Act. Hence an oral statement made before the Excise Officer acting under S. 20-B (Orissa)

and which has been later on reduced into writing cannot be used in evidence against the maker who is subsequently accused of the offence and tried for the same. 1957 Orissa 39 (41) [(S) AIR V 44 C 13] : I L R (1957) Cut 63 : 1957 Cri L Jour 384 (DB).



with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner as if such report is a report in writing made by a Police Officer under clause (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898.

**20H. Attendance of witness before Magistrate.**—An officer of the Excise or Police Department acting under the provisions of section 20G shall have all the powers conferred by the Code of Criminal Procedure, 1898, on an officer-in-charge of a police-station for the purpose of causing the appearance before the Magistrate of persons acquainted with the circumstances of the case.

**20I. Police to take charge of the articles seized.**—All officers-in-charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate or an investigating officer of the Excise or Police Department, all articles seized under this Act, which may be delivered to them, and shall allow any investigating officer who may accompany such articles to the police-station or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer-in-charge of the police-station and with the seal of the accused or his agent if he is available. All such packets of samples shall be signed by the accused or his agent if he is available."

—Orissa Act II of 1939, S. 2 [in Balasore District on 1-6-1940; in Cuttack, Puri, Sambalpur, Ganjam and Koraput Districts on 1-6-1942].

## WEST BENGAL

For section 20, the following sections shall be substituted, namely,—

**20. Power of State Government to authorise officers to investigate offences and grant bail.**—(1) The State Government may, by notification in the Official Gazette authorise any class of officers of the Excise, Police or Customs Department to investigate offences, and to grant bail to persons arrested under this Act.

(2) The State Government may, from time to time, determine the form of the bail bond to be used.

**20A. Persons arrested how to be dealt with.**—(1) When any person is arrested or any opium or other thing is seized under the provisions of this Act, the person making the arrest or seizure shall, if he is an officer of the Excise, Police or Customs Department, forthwith forward the person arrested or the thing seized to the nearest officer of his department empowered under section 20 unless he is himself so empowered.

(2) When such arrest or seizure is made by any officer referred to in section 14 or section 15 other than an officer of the Excise, Police or Customs Department, he shall forthwith forward the person arrested or the thing seized to the nearest officer of the Excise, Police or Customs Department empowered under section 20 and having jurisdiction in the case.

(3) When any person is brought in custody before an officer empowered under section 20, or when such officer has himself arrested or procured the appearance by summons under section 20D of any person, he shall make such investigation as seems to him necessary, and shall either release such person or admit him to bail to appear, or if bail is not given, produce him or cause the officer-in-charge of the nearest police-station to produce him before a Magistrate having jurisdiction in the case :

Provided that if the investigation is not completed within twenty-four hours of the arrest, the said officer may take bail with or without security from the person arrested to appear on any subsequent date before himself, and shall, if such bail is not given, forthwith forward the arrested person to the nearest Magistrate with a report of the case, and a request to detain him in custody for such period not exceeding fourteen days as may be necessary to complete the investigation and to order his production before the said officer when necessary for such investigation.

(4) The Magistrate to whom an arrested person is so forwarded, whether he has or has not jurisdiction to try the case, may, by order in writing stating the reasons therefor, authorize the detention of the arrested person in default of bail in such custody as he thinks fit for a term not exceeding fourteen days in the whole.

**20B. Power of investigating officer to summon witnesses.**—(1) An officer empowered under section 20 may summon any person to appear before himself to give evidence, or to produce any document, necessary for the purposes of an investigation.

(2) Such summons, shall state whether the person summoned is required to give evidence or to produce a document or both, and shall specify a time and place for appearance.

(3) It shall be lawful for such officer instead of issuing a summons to proceed to the residence of any person whom by reason of sickness or other infirmity or by reason of rank or sex it may not seem proper to summon, and there require him to answer such questions as may be necessary for the purposes of the investigation.

(4) Any person examined in accordance with the provisions of sub-section (1) or sub-section (3) shall be bound to answer all questions relating to the investigations put to him

by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(5) The provisions of section 162 of the Code of Criminal Procedure, 1898, shall apply to the statements made by any person under this section.

(6) No oaths shall be administered to any such person.

**20C. Power of investigating officer to release accused when evidence deficient.**—If upon an investigation under this Act it appears to the officer-in-charge of such investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate for trial.

**20D. Power of certain officers to summon suspected persons.**—When any officer of the Excise, Police or Customs Department, not below such rank as may be prescribed by the Provincial Government by notification in the Official Gazette has reasonable grounds for believing that any person has committed an offence under this Act, he may, after recording his reasons in writing, and either with or without previous investigation, summon such person to appear before him.

**20E. Summoning witnesses, etc., how to be made.**—The provisions of the Code of Criminal Procedure, 1898, relating to summonses and compelling the appearance of persons summoned and the production of documents shall apply, as far as may be, in the case of any summons issued by an officer of the Excise, Police or Customs Department, empowered to issue a summons under this Act.

**20F. Procedure in case of forfeiture of bond.**—When it appears to an officer of the Excise, Police or Customs Department that a bond for appearance before himself has been forfeited, he shall forward the bond to the Magistrate having jurisdiction to try the offence of which the person bailed was accused, and the Magistrate shall deal with the matter in the manner provided by the Code of Criminal Procedure, 1898, for the forfeiture of bonds for appearance before his own Court.

**20G. Jurisdiction of Magistrate on receipt of report from Excise Officer, etc.**—When an officer of the Excise, Police or Customs Department forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to try the case or admits any such person to bail to appear before such Magistrate, he shall submit a report setting forth the name of the accused person and the nature of the offence with which he was charged and the names of the person who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner as if such report is a report in writing made by a police officer under clause (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898.

**20H. Attendance of witnesses before Magistrate.**—An officer of the Excise, Police or Customs Department acting under the provisions of section 20G shall have all the powers conferred by the Code of Criminal Procedure, 1898, on an officer in charge of a police-station for the purpose of causing the appearance before the Magistrate of persons acquainted with the circumstances of the case.

**20I. Police to take charge of articles seized.**—All officers-in-charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate or an investigating officer of the Excise, Police or Customs Department, all articles seized under this Act which may be delivered to them, and shall allow any investigating officer who may accompany such articles to the police-station or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer-in-charge of the police-station and with the seal of the accused or his agent if he is available. All such packets of samples shall be signed by the accused or his agent if he is available.

**20J. Diary of proceedings in investigation.**—(1) Every Excise, Police or Customs officer making an investigation under this Act shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained from day to day until the investigation is closed.

(2) The provisions of sub-section (2) of S. 172 of the Code of Criminal Procedure, 1898, shall apply in the case of every such diary." —Beng. Act V of 1933, S. 12.

#### Section 20-G (West Bengal)—Note 1

[1] Although under S. 20-G (Bengal) the report of an excise officer can be treated as a police report for the purpose of taking cognizance of a case, it cannot be considered to be a police report within the provisions of S. 173, Criminal P. C. Hence in the trial the Magistrate has to adopt only the procedure

prescribed by S. 252 of Criminal P. C. The procedure prescribed by S. 251-A of the Criminal P. C. being applicable only where the case commences on a police report under S. 173, of that Code cannot be adopted by the Magistrate. 1958 Cal 213 (218, 219) [AIR V 45 C 50] : 1958 Cri L Jour 622 (DB).

**21. Report of arrests and seizures.**

Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

**STATE AMENDMENT****WEST BENGAL**

For the words "forty-eight hours" the words "twenty-four hours" shall be substituted.  
—Beng. Act V of 1933, S. 13.

**22. Procedure in case of illegal poppy cultivation. [*Repealed by the Dangerous Drugs Act, 1930 (II of 1930), section 40 and Schedule II.*]****23. Recovery of arrears of fees, duties, etc.**

Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the <sup>A</sup>[State Government] or from his surety (if any) as if it were an arrear of land-revenue.

**STATE AMENDMENT****WEST BENGAL**

The words "or any person licensed in this behalf under this Act" shall be inserted after the words "opium-revenue."  
—Beng. Act V of 1933, S. 14.

**24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.**

When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the <sup>A</sup>[State Government] in this behalf, praying such officer to recover, such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an "arrear of land-revenue, and shall pay any amount so recovered to the applicant :

Provided that the execution of any process issued by such Collector, <sup>b</sup>[Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

[a] See the Revenue Recovery Act, 1890 (I of 1890). [b] Substituted for "Deputy Collector", by the Amending Act, 1891 (XII of 1891), Sch. II.

**25. Recovery of penalties due under bond.**

When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

**Section 21 — Note 1**

[1] The Act does not lay down any special procedure relating to search, seizure or arrest.

1952 Him Pra 74 (79) [AIR V 39] : 1952 Cri L Jour 1712.

**SCHEDULE.**—Enactments repealed. [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*]

### STATE AMENDMENTS

#### SCHEDULE

#### ASSAM

For a new Schedule added in Assam, see Assam Act I of 1933.

#### MADHYA PRADESH

"Bond to abstain from the commission of offences under the Opium Act, 1878.

[*See Section 9J (2)*]

Whereas I (name) . . . . . inhabitant of (place) . . . . . have been called upon to enter into a bond to abstain from the commission of offences under sections 9 to 9G of the Opium Act, 1878 for a term of . . . . . I hereby bind myself not to commit any such offence during the said term, and, in case of my making default therein I hereby bind myself to forfeit to Governor of Madhya Pradesh the sum of Rs. . . . . Dated this . . . . . day of . . . . . 19 . . . .

Signature . . . . .

(Where a bond with sureties is to be executed, add)—

We do hereby declare ourselves sureties for the above named . . . . . that he shall abstain from the commission of offences under Sections 9 to 9G of the Opium Act, 1878, during the said term and in case of his making default therein we bind ourselves jointly and severally, to forfeit to Governor of Madhya Pradesh, the sum of Rs. . . . . Dated this . . . . . day of . . . . . 19 . . . .

Signature . . . . . "

—M. B. Act XV of 1955 [17-6-1955] read with M. P. Act XXXIII of 1958, S. 3.

## [THE] OPIUM AND REVENUE LAWS (EXTENSION OF APPLICATION) ACT, 1950

(ACT XXXIII of 1950)

[The Act printed here is as on 1-10-1960.]

### CONTENTS

#### SECTIONS

1. Short title.

2. Extension of certain opium and revenue laws to certain parts of India.

3. Modifications in State laws relating to income-tax investigation.

4. Repeals and savings.

5. Removal of difficulties.

#### THE SCHEDULE.

#### STATEMENT OF OBJECTS AND REASONS

"The main laws relating to income-tax and duties of customs and central excises are being extended to the rest of India and a provision therefor has been made in the Finance Bill as the extension of these laws formed

part of the Budget proposals. The object of this Bill is to extend other ancillary laws to the rest of India excluding the State of Jammu and Kashmir."

—Gaz. of Ind., 1950, Pt. II-Sec. 2, p. 198.

#### ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act XLIV of 1951.

## [THE] OPIUM AND REVENUE LAWS (EXTENSION OF APPLICATION) ACT, 1950

(ACT XXXIII OF 1950)<sup>a</sup>

[18th April, 1950.]

*An Act to provide for the extension of certain opium and revenue laws to certain parts of India.*

BE it enacted by Parliament as follows :—

#### 1. Short title.

This Act may be called THE OPIUM AND REVENUE LAWS (EXTENSION OF APPLICATION) ACT, 1950.

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1950, Pt. II-Sec. 2, p. 198.

## 2. Extension of certain opium and revenue laws to certain parts of India.

(1) The following Acts, namely,—

- (i) the Opium Act, 1857,
- (ii) the Opium Act, 1878,
- (iii) the Revenue Recovery Act, 1890,
- (iv) the Government Trading Taxation Act, 1926,
- (v) the Dangerous Drugs Act, 1930,
- (vi) the Taxation on Income (Investigation Commission) Act, 1947, and
- (vii) the Payment of Taxes (Transfer of Property) Act, 1949,

and all rules and orders made thereunder, which are in force immediately before the commencement of this Act in certain parts of India, are hereby extended to and shall be in force in, the rest of India except the State of Jammu and Kashmir.

(2) The amendments specified in the Schedule shall be made in the aforesaid Acts.

## 3. Modifications in State laws relating to income-tax investigation.

If immediately before the commencement of this Act there is in force in any Part B State<sup>a</sup> other than Jammu and Kashmir any law (hereinafter in this section referred to as "the State law") corresponding to the Taxation on Income (Investigation Commission) Act, 1947, that law shall continue to remain in force with the following modifications, namely :—

- (a) all cases referred to or pending before the State Commission (by whatever name called) in respect of matters relating to taxation on income other

### Section 2— Note 1

[1] The Opium and Revenue Laws (Extension of Application) Act, 1950, which came into force on 20th April 1950, has by S. 2 of the Act, extended the application of the Revenue Recovery Act (I of 1890) to the Pepsu State. 1955 Pepsu 133 (134) [(S) AIR V 42 C 30] : ILR (1956) Patiala 234 (DB).

### Section 3 — Note 1

[1] The absence of a provision saving the operation of the prior Act in the Opium and Revenue Laws (Extension of Application) Act which extended the operation of the Central Revenue Recovery Act of 1890 to Part B States is not fatal to the enforcement of claims that arose under the Cochin Revenue Recovery Act which was repealed. 1954 Trav-Co 518 (520) [AIR V 41 C 180] : ILR (1954) Trav-Co 1005 (FB).

[2] Section 3 of this Act as amended by Act 44 of 1951 provided that the Travancore Taxation on Income (Investigation Commission) Act, 1947, shall continue to remain in force with certain modifications. 1954 Trav-Co 131 (134) [AIR V 41 C 45] : ILR (1953) Trav-Co 1145 (FB).

[3] The Government of Travancore-Cochin by its order, Ext. G dated 14th February, 1950, accepted the findings of the Investigation Commission and directed that immediate steps be taken to recover the net amount of income-tax due from the party according to the said

findings under the Travancore Income-tax Act of 1096. The Government of India apparently found that the Income-tax Authorities were not following the procedure prescribed by the Travancore Taxation on Income (Investigation Commission) Act, 1124 in implementing Ex. G; and issued Ex. H, dated 25th October, 1951, in which they said : "The Central Government hereby, in implementation of the order of the Government of Travancore-Cochin dated 14th February, 1950, direct that appropriate assessment proceedings under the Travancore Income-tax Act (XIII of 1096) shall be taken against the assessee with a view to assess or re-assess the amount of concealed income of Rs. 1,31,750 which escaped assessment." *Held*, that Ext. G issued by the Government of Travancore-Cochin which was the basic order under S. 8 (2), Travancore Taxation on Income (Investigation Commission) Act, 1124, and Ex. H issued by the Government of India after the Opium and Revenue Laws (Extension of Application) Act, 1950, which was nothing more than a communication calling the attention of the Income-tax Authorities to the procedure they should follow in implementing Ex. G under S. 8, Travancore Taxation on Income-tax (Investigation Commission) Act, 1124, were both well within the competence of the Governments concerned and were valid orders. 1955 Trav-Co 15 (16) [AIR V 42 C 8] (SB).

than agricultural income shall stand transferred to the Central Commission for disposal :

Provided that the Central Commission shall not, by reason merely of the transfer of any case under the provisions of this section, be bound to recall or rehear any witness who has given evidence in the case, and may act on the evidence already recorded by or produced before the Commission which was originally investigating into the case ;

- <sup>b</sup>[(b) in the disposal of cases transferred to the Central Commission under clause (a), it shall have and exercise the same powers as it has and exercises in the investigation of cases referred to it under the Taxation on Income (Investigation Commission) Act, 1947, and shall be entitled to act for the same term as under sub-section (3) of section 4 of that Act ;
- (bb) any decision given, whether before or after the commencement of this Act, by the Chief Revenue Authority of Travancore or of Travancore-Cochin in the exercise or purported exercise of any powers conferred on it by any law for the time being in force in the State shall be deemed to be a decision given by the Income-tax authority for the purposes of sub-section (2) of section 8 of the Travancore Taxation on Income (Investigation Commission) Act, 1124c;]
- (c) any reference in the State Law, by whatever form of words, to the State Government or the State Commission shall, in relation to income other than agricultural income, be construed as a reference to the Central Government or the Central Commission, as the case may be ;
- (d) the report of the Central Commission shall be submitted to the Central Government, and the Central Government may, by order in writing, direct that such proceedings as it thinks fit under the law in force in the State relating to income-tax, super-tax or excess profits tax or any other law, shall be taken against the person to whose case the report relates in respect of his income other than agricultural income, and upon such a direction being given, all such proceedings may be taken and completed under the appropriate law applicable in the State, as if the direction had been given and the proceedings had been instituted thereunder ;
- (e) where under any law in force in the State the agricultural income of an assessee is to be included in his total income for the purpose of determining the tax payable by him, the tax payable in respect of his income other than agricultural income shall be an amount bearing to the total amount of tax which would have been payable under the appropriate law in force in the State if a combined assessment had been made, the same proportion as such income bears to the total income including the agricultural income :

Provided that for this purpose any reduction of tax allowed on the agricultural income by the appropriate law in force in the State shall not be taken into account.

*Explanation.* — In this section, “Central Commission” means the Income-tax Investigation Commission constituted under the Taxation on Income (Investigation Commission) Act, 1947.

[a] Immediately before 1-11-1956 the following were Part B States, namely, Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. [b] *Substituted and deemed always to have been substituted for the former clause (b) of S. 3, by the Opium and Revenue Laws (Extension of Application) Amendment Act, 1951 (XLIV of 1951), S. 2.* [c] Travancore Act XIV of 1124.

#### 4. Repeals and savings.

If immediately before the commencement of this Act there is in force in any Part B States\*, other than Jammu and Kashmir, or in the merged territory of Cooch Behar any law corresponding to any of the Acts specified in section 2, other than the Taxation on Income (Investigation Commission) Act, 1947, that law shall, upon the commencement of this Act, stand repealed :

Provided that such repeal shall not affect—

- (a) the previous operation of that law, or
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against that law, or
- (c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed :

Provided further that anything done or any action taken under any provision of that law shall be deemed to have been done or taken under the corresponding provision of the Central Act as now extended to the State and shall continue in force accordingly.

[a] See foot-note 'a' under S. 3.

#### 5. Removal of difficulties.

If any difficulty arises in giving effect to the provisions of any of the Acts, rules or orders now extended to any part of India in which they were not in force before the commencement of this Act, the Central Government may, by order published in the Official Gazette, make such provision or give such direction as appears to it to be necessary for removing the difficulty.

##### Section 4 — Note 1

[1] The effect of S. 4 is to repeal the Gwalior State Rules for the Recovery of Government Dues, Samvat 2001, which embodied a law corresponding to the Revenue Recovery Act, 1890. 1952 Madh B 194 (196) [AIR V 39] : 1953 Cri L Jour 27.

[2] Where the proceedings for the recovery of the dues to a Co-operative Bank were initiated under the Patiala Recovery of State Dues Act, Bk. 2002, before the Central Act 33 of 1950 had received the assent of the President and was published, the validity of the mode of initiation of the proceedings cannot be questioned on the ground of anything contained in the Revenue Recovery Act, 1890, as the previous operation of the corresponding law in force in the State is expressly saved by proviso (a) to S. 4. 1955 Pepsu 129 (130) [(S) AIR V 42 C 29] (DB).

[3] Section 4 of Act 33 of 1950, by which certain Acts including Revenue Recovery Act of 1890 are enforced in Pepsu repeals only those local laws which correspond to these Acts. Revenue Recovery Act and Patiala Revenue Recovery of State Dues Act (2002 Bk.) do not wholly correspond; either of them, to a great extent supplements the other. Hence, in cases where State royalty with respect to a brick kiln is being realised as an arrear of land revenue by the Collector in his own district there is no conflict between the two Acts and the question of the Central Act repealing the local law does not

arise. 1956 Pepsu 14 (16) [(S) AIR V 43 C 6] (DB).

[4] The Revenue Recovery Act of 1890 simply prescribes the procedure for starting the proceedings for recovery of certain public demands. It does not lay down the procedure to be followed after the proceedings are initiated. The procedure for the actual recovery is to be guided by the law in force in the State where the recovery is made. 1955 Pepsu 129 (130) [(S) AIR V 42 C 29] (DB).

[5] Section 4 expressly repeals any law in force in Part B States corresponding to the Acts specified in S. 2. The Patiala Recovery of State Dues Act, 4 of 2002 Bk. is a law corresponding to the Revenue Recovery Act of 1890. 1955 Pepsu 133 (134) [(S) AIR V 42 C 30] : ILR (1956) Patiala 234 (DB).

[See however 1959 Punj 440 (444) [AIR V 46 C 133] : ILR (1959) Punj 1384 (DB).]

[6] Mere similarity in the names given to the Patiala Recovery of State Dues Act and Revenue Recovery Act does not lead to the conclusion that the application of the Revenue Recovery Act has the effect of repealing the Patiala Act, in its entirety. By necessary implication of S. 4 of the Act of 1950 the provisions of the Patiala Act, so far as they do not correspond to, but may supplement, those of the Revenue Recovery Act are preserved. 1955 Pepsu 133 (135, 136) [(S) AIR V 42 C 30] : ILR (1956) Patiala 234 (DB).

## THE SCHEDULE

[See section 2 (2)]

Enactments amended

Year 1	No. 2	Short title 3	Amendments 4
1857	XIII	The Opium Act, 1857	<p>(1) In the preamble, omit the words "in the Presidency of Fort William in Bengal".</p> <p>(2) Insert the following as section 1 namely:—</p> <p>"1. <i>Short title and extent.</i> — (1) This Act may be called the Opium Act, 1857.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir".</p>
1878	I	The Opium Act, 1878	<p>(1) In section 1, for the words beginning with "It shall extend to" and ending with the words "directs in this behalf", substitute the following namely:—</p> <p>"It extends to the whole of India except the State of Jammu and Kashmir".</p> <p>(2) In section 3, for the definitions of "import", "export", "transport", "sale" and "sell", substitute the following, namely:—</p> <p>"Customs frontiers" means any of the customs frontiers of India as defined by the Central Government under section 3A of the Sea Customs Act, 1878;</p> <p>"Import" and "export" means respectively to bring into, or take out of, a State otherwise than across any customs frontiers;</p> <p>"transport" means to remove from one place to another within the same State;</p> <p>"sale" does not include sale for export across customs frontiers, and "sell" shall be construed accordingly.</p>
1890	I	The Revenue Recovery Act, 1890.	<p>(1) In sub-section (2) of section 1, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir".</p> <p>(2) In sub-section (4) of section 4, for the words and letters "a Part A State or a Part C State" substitute the words "any State to which this Act extends".</p>
1926	III	The Government Trading Taxation Act, 1926.	<p>(1) In the preamble, omit the words "or the Government of any Acceding State or other Indian State".</p> <p>(2) In section 2,—</p> <p>(a) In sub-section (1), for the words, "in Part A States and Part C States" substitute the word "India";</p> <p>(b) omit sub-section (1A);</p> <p>(c) in sub-section (3), add the following words at the end, namely:—</p> <p>"and "India" means the territory of India excluding the State of Jammu and Kashmir".</p> <p>(3) In section 3, for the words "upon an Acceding State or other Indian State" substitute the words and letter "upon a Part B State".</p>
1930	II	The Dangerous Drugs Act, 1930.	<p>(1) In sub-section (2) of section 1, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir".</p> <p>(2) In sub-section (1) of section 39, for the words and letters "or an Act of the Legislature of a Part A State or Part C State" substitute the words "or an Act of any State Legislature".</p>
1947	XXX	The Taxation on Income (Investigation Commission) Act, 1947.	<p>In sub-section (2) of section 1, for the words and letter "Part B State" substitute the words "the State of Jammu and Kashmir".</p>
1949	XXII	The Payment of Taxes (Transfer of Property) Act, 1949.	<p>(1) In sub-section (2) of section 1, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir".</p> <p>(2) In the <i>Explanation</i> to section 2, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir".</p>



# [THE] ORIENTAL GAS COMPANY

(ACT V of 1857)

[The Act printed here is as on 1-10-1960.]

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## [THE] ORIENTAL GAS COMPANY

(ACT V OF 1857)<sup>a</sup>

[13th February, 1857.]

*An Act to confer certain powers on the Oriental Gas Company, Limited.*

### Preamble.

**WHEREAS** a Joint Stock Company has been lately formed for the purpose of introducing Gas-works into India, which Company having been completely registered in England under the Act of Parliament of the eighth year of the of Her present Majesty, Cap. 110, has since been registered in England

under "The Joint Stock Companies' Act, 1856", with limited liability, and has duly obtained a certificate of Incorporation under the name of the Oriental Gas Company, Limited; and whereas the said Company has erected Gas-works on land granted for that purpose by Government in the vicinity of the Town of Calcutta, and is engaged in the preparation of apparatus and materials for the manufacture and supply of Gas for lighting the said Town; and whereas it is expedient that powers and facilities should be given to the said Company to enable them to carry out their undertaking of lighting with Gas the said Town of Calcutta, which powers and facilities may hereafter be extended to the operations of the said Company in other towns and places; It is enacted as follows :—

[a] For extension of the Act to certain places in India, *see* the Oriental Gas Company (Act XI of 1867).

### **1. Power to break up streets, etc., under superintendence, and to open drains.**

In the Town of Calcutta and its environs, and in any other town or place to which the provisions of this Act may hereafter be extended, by a law to be passed for that purpose, the Oriental Gas Company, Limited, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service-pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the Gas; and for the purposes aforesaid, may remove and use all earth and materials in and under such streets and bridges; and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the said Company shall from time to time deem necessary for supplying Gas to the inhabitants of the said Town of Calcutta and its environs, or other town or place as aforesaid, doing as little damage as may be in the execution of the powers hereby granted, and making compensation for any damage which may be done in the execution of such powers.

### **2. Not to enter on private land without consent.**

Provided always, that nothing herein shall authorize or empower the said Company to lay down or place any pipe or other works into, through, or against any building, or in any land not dedicated to public use, without the consent of the owners and occupiers thereof; except that the said Company may at any time enter upon and lay or place any new pipe in the place of an existing pipe, in any land wherein any pipe has been already lawfully laid down or placed in pursuance of this Act, and may repair or alter any pipe so laid down.

### **3. Notice to be served on persons having control, etc., before breaking up streets or opening drains.**

Before the said Company proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the Municipal Commissioners for the Town of Calcutta\* or other persons under whose control or management the same may be, or to their Clerk, Surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work; except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

[a] For amendment of this section where this Act is extended to any place other than Calcutta, *see* section 2. of the Oriental Gas Company (Act XI of 1867).

- 4. Streets or drains not to be broken up except under superintendence of persons having control of the same.** If persons having the control, etc., fail to superintend, Company may proceed with the work.

No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by a Magistrate; and such Magistrate may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the said Company to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always that, if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the said Company's intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said Company may perform the work specified in such notice without the superintendence of such persons or their officer.

- 5. Streets broken up to be reinstated without delay.**

When the said Company open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall, with all convenient speed, complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby; and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up; and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

*Note.*—Violation of the provisions of sections 3, 4 or 5, entails the forfeiture of a sum not exceeding fifty rupees for every offence.

- 6. Penalty for delay in reinstating streets.**

If the said Company open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the said Company are hereby authorized to perform such works without any superintendence or notice; or if the said Company make any delay in completing any such work, or in filling in the ground or reinstating and making good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby; or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same shall have been made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made, a sum not exceeding fifty rupees for every such offence, and they shall forfeit an additional sum not exceeding fifty rupees for each day during which

any such delay as aforesaid shall continue after they shall have received notice thereof.

**7. In case of delay, other parties may reinstate, and recover the expenses. Expense how to be ascertained and recovered.**

If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed; and the expense of executing the same shall be repaid to such persons by the said Company; and the amount of such expense shall, in case of any dispute about the same, be ascertained and recovered in Calcutta and in any other town or place subject to the jurisdiction of any of Her Majesty's Courts of Judicature, in the manner in which expenses are ascertained and recovered under Act XIV of 1856,<sup>a</sup> and in any town or place not within the jurisdiction of any of Her Majesty's Courts, in the same manner as damages are recoverable under this Act.

[a] This Act provided for Conservancy in Presidency-towns; it was *repealed* by the Repealing Act, 1874 (XVI of 1874).

For amendment of this section where this Act is extended to any place other than Calcutta, *see* section 2 of the Oriental Gas Company (Act XI of 1867).

**8. Power to enter buildings for ascertaining quantity of gas consumed.**

The Clerk, Engineer, or other officer duly appointed for the purpose by the said Company, may, at all reasonable times, enter any buildings or place lighted with Gas supplied by the said Company, in order to inspect the meters, fittings, and works for regulating the supply of Gas, and for the purpose of ascertaining the quantity of Gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall, for every such offence, forfeit to the said Company a sum not exceeding fifty rupees.

**9. Recovery of rent due for gas.**

If any person supplied with Gas, or any person to whom any meter or fitting shall have been let for hire by the said Company, neglect to pay the rent due for the same to the said Company, the said Company may stop the Gas from entering the premises of such person, by cutting off the service-pipes, or by such means as the said Company shall think fit, and recover the rent due from such person, together with the expenses of cutting off the Gas, by action in any Court of competent jurisdiction.

**10. Power to take away pipes when supply of gas discontinued.**

In all cases in which the said Company are authorized to cut off and take away the supply of Gas from any house or building or premises under the provisions of this Act, the said Company, their agents or workmen, after giving twenty-four hours' previous notice to the occupier, may enter into any such house, building, or premises, between the hours of nine in the forenoon and four in the afternoon, and remove and carry away any pipe, meter, fittings, or other works, the property of the said Company.

**11. Meters not liable to distress for rent, etc.**

Any meter or fitting let for hire by the said Company shall not be subject to distress for rent or revenue or any rate due upon the premises where the same may be used, nor be taken in execution under any process of a Court of law or equity, or any proceeding in insolvency against the person in whose possession the same may be.

**12. Penalty for fraudulently using gas.**

Every person who shall lay, or cause to be laid, any pipe to communicate with any pipe belonging to the said Company, without their consent, or shall

fraudulently injure any such meter as aforesaid, or who, in case the Gas supplied by the said Company is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the said Company, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or shall otherwise improperly use or burn the Gas, or shall supply any other person with any part of the Gas supplied to him by the said Company, shall forfeit to the said Company the sum of fifty rupees for every such offence, and also the sum of twenty rupees for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished ; and the said Company may take off the Gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.

**13. Penalty for wilfully damaging pipes.**

Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the said Company for supplying Gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the Gas supplied by the said Company, shall, for each such offence, forfeit to the said Company any sum not exceeding fifty rupees, in addition to the amount of the damage done.

**14. Satisfaction for accidentally damaging pipes.**

Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the said Company, or under their control, shall pay such sum of money by way of satisfaction to the said Company for the damage done, not exceeding fifty rupees, as any Magistrate shall think reasonable.

**15. Penalty for causing water to be corrupted. Daily penalty during the continuance of the offence.**

If the said Company shall at any time cause or suffer to be brought, or to flow into any stream, reservoir, aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying Gas, or shall wilfully do any act connected with the making or supplying of Gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water, shall be fouled, the said Company shall forfeit for every such offence a sum not exceeding one thousand rupees ; and they shall forfeit an additional sum not exceeding five hundred rupees for each day during which such washing or other substance shall be brought or shall flow, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the said Company, by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby; and such penalties shall be paid to such last-mentioned person.

**16. Daily penalty during escape of Gas after notice.**

Whenever any Gas shall escape from any pipe, laid down or set up by or belonging to the said Company, they shall, immediately after receiving notice thereof in writing, prevent such Gas from escaping ; and in case the said Company shall not, within twenty-four hours next after service of such notice, effectually prevent the Gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of fifty rupees for each day during which the Gas shall be suffered to escape, after the expiration of twenty-four hours from the service of such notice.

**17. Penalty if water be fouled by Gas.**

Whenever any water shall be fouled by the Gas of the said Company, they shall forfeit to the person whose water shall be so fouled for every such

offence a sum not exceeding two hundred rupees, and a further sum, not exceeding one hundred rupees, for each day during which the offence shall continue, after the expiration of twenty-four hours from the service of notice of such offence.

**18. Power to examine Gas-pipes to ascertain cause of water being fouled.**

For the purpose of ascertaining whether such water be fouled by the Gas of the said Company, the person to whom the water supposed to be fouled shall belong, may dig up the ground, and examine the pipes, conduits, and works of the said Company ; provided that such person, before proceeding so to dig and examine, shall give twenty-four hours' notice in writing to the said Company of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place, and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay, or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the said Company, for the purpose of laying their pipes.

**19. Expenses to abide result of examination.**

If upon any such examination it appear that such water has been fouled by any Gas belonging to the said Company, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the said Company; but if upon such examination, it appear that the water has not been fouled by the Gas of the said Company, the person causing such examination to be made, shall pay all such expenses, and shall also make good to the said Company any injury which may be occasioned to their works by such examination.

**20. How expenses to be ascertained.**

The amount of the expenses of every such examination and repair, and of any injury done to the said Company, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the manner prescribed for the ascertainment and recovery of expenses in section 7 of this Act.

**21. Liability to indictments for nuisance.**

Nothing in this Act contained shall prevent the said Company from being liable to an indictment for nuisance, or to any other legal proceedings to which they may be liable in consequence of making or supplying Gas.

**22. Copies of the original Deed of Association and of all rules, etc., to be kept for inspection at the office of the Company in Calcutta and in the office of the Registrar of Joint Stock Companies, or the Keeper of the Records of the Supreme Court at Fort William.**

A copy of the original Deed of Association of the said Company, and of every other instrument registered under the said "Joint Stock Companies' Act, 1856", as constituting the Regulations of the said Company, and a copy of every special resolution of a General Meeting whereby any change shall have been, or at any time shall be made in the Regulations of the said Company, shall be kept at the office of the said Company in Calcutta, and shall there be open to the inspection of all persons during the usual hours of business of the said office; and a copy of such original Deed of Association, and of every other such instrument, and of every special resolution as aforesaid, shall also be deposited by the said Company as soon as it can be done after the passing of this Act, or after the making of any such special resolution hereafter to be made, in the office of the Registrar of Joint Stock Companies, or, if there be no such officer, in the office of the Keeper of the Records of the Supreme Court of

Judicature at Fort William\*, and shall there be filed; and an examined copy of any such filed copy as aforesaid, certified by and under the hand of the Registrar of Joint Stock Companies, or of the Keeper of the Records of the said Supreme Court, shall be good and sufficient evidence of each such original Deed, instrument, or special resolution, in all actions, suits, and proceedings whatsoever, whether civil or criminal, to be had in any Court of Justice or before any Magistrate, or Revenue or other officer, and whether acting judicially or in any proceedings preliminary to a judicial inquiry, throughout the territories of the East India Company.

[a] Now High Court at Calcutta.

For amendment of this section where this Act is extended to any place other than Calcutta, *see* section 2 of the Oriental Gas Company (Act XI of 1867).

### **23. Service of process.**

All services of mesne or other process, and all notices whatsoever, which, by law or by the practice of any Court wherein the said Company shall sue or be sued, are required to be made, served, or given for any purpose whatsoever to the said Company, shall and may be made, served, and given, in addition to all ways and means by which the same may otherwise be legally made, served, and given, by leaving the same addressed to the Managing Agent of the said Company at the office in Calcutta of the said Company.

### **24. Recovery of penalties, etc.**

All penalties and forfeitures imposed by this Act, and all damages and expenses the recovery of which is not specially provided for, may be recovered by summary proceeding before a Magistrate.

### **25. Levy by distress.**

All penalties, forfeitures, damages, and expenses adjudged due under this Act, if the amount be not otherwise paid, may be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from such goods and chattels, after satisfying such amount and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained; or instead of proceeding by distress and sale, or in case of failure to realise by distress the whole or any part of any penalties, forfeitures, damages, or expenses imposed or incurred under the provisions of this Act, the person claiming such penalty, forfeiture, damage, or expenses, may sue the person liable to pay the same in any Court of competent jurisdiction.

### **26. No distress unlawful for want of form, etc.**

No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall any such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by any irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

### **27. Interpretation.**

The following words and expressions used in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number.

Words importing the masculine gender shall include females.

The word "person" shall include a corporation, whether aggregate or sole.

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place.



The word "Magistrate" shall include any Magistrate of Police, and any joint Magistrate or other person lawfully exercising the powers of Magistrate, acting at or for the place or district where the matter requiring the cognizance of any such Magistrate arises.

**[THE] ORIENTAL GAS COMPANY  
(ACT XI of 1867)**

[The Act printed here is as on 1-10-1960]

**C O N T E N T S**

**PREAMBLE**

1. [*Repealed*].

2. Power to extend Act V of 1857.

**ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION**

—Adapted by A. O., 1937; A. C. A. O., 1948; A. L. O., 1950; 2 A. L. O., 1956.

**[THE] ORIENTAL GAS COMPANY  
(ACT XI OF 1867)**

[1st March, 1867.]

*An Act to empower the Oriental Gas Company Limited, to extend their operations to certain places in the States of India.*

**Preamble.**

WHEREAS under or by virtue of Act No. V of 1857 (to confer certain powers on the Oriental Gas Company, Limited), certain powers exercisable only in Calcutta and its environs were conferred on the Oriental Gas Company, Limited; and whereas it is expedient to empower the said Company to extend, with the previous sanction of the <sup>a</sup>[Central Government], their operations to any other place in the States of India; It is hereby enacted as follows:—

[a] Substituted for "Local Government", by A.O., 1937 [1-4-1937].

**1.** Interpretation clause [*Repealed by the A. O. 1937.*]

**2.** Power to extend Act 5 of 1857.

The <sup>a</sup>[Central Government] may, by notification in the Official Gazette, extend the said Act No. V of 1857, to any place in <sup>b</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States] other than Calcutta and its environs: Provided that, in every place to which the said Act shall be so extended, section 3 of the same Act shall be read as if for the words 'Town of Calcutta', the name of the place to which the said Act shall be so extended were substituted: section 7 of the same Act shall be read as if for the words and figures 'Act XIV of 1856', the following words were substituted; (that is to say) 'any law for the time being in force to provide for the conservancy and improvement of such place:' Section 22 of the said Act shall be read, as if after the words 'Joint Stock Companies' Act, 1856', the following words were inserted; (that is to say) 'the Indian Companies' Act, 1866, or any other Statute or Act for the time being in force relating to Joint Stock Companies'; and as if for the expression 'Supreme Court of Judicature at Fort William', the name of the highest Civil Court of appeal in such place were substituted; and as if for the expression 'the territories of the East India Company', the expression <sup>b</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States] <sup>c</sup>[\* \* \*] were substituted.

[a] Substituted for "Local Government", by A. O., 1937 [1-4-1937]. [b] Substituted for "the States" by 2 A. L. O., 1956 [1-11-1956]. [c] The words "as defined in this Act" were omitted by A.C.A.O., 1948 [23-3-1948].

**Note:—**This section amends Ss. 3, 7 and 22 of Act No. V of 1857, where this Act is extended to any place other than Calcutta.



**[THE] ORPHANAGES AND OTHER CHARITABLE HOMES  
(SUPERVISION AND CONTROL) ACT, 1960**

**(ACT X of 1960)**

[The Act printed here is as on 1-10-1960.]

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**STATEMENT OF OBJECTS AND REASONS**

"There are hundreds of orphanages and other charitable homes in the country whose pitiable conditions of existence do not appear to have been taken into consideration in any legislation so far undertaken in any State Legislature or in Parliament.

The Bills hitherto introduced either in the State Legislatures or in Parliament have sought to penalise criminal activities commonly presumed to be indulged in by orphanages and widows' homes and to vest in the executive powers to deal with such activities. But very little attention has been given to the constructive side of these institutions.

It must be admitted on all hands that orphanages and other charitable homes are necessary for the society for diverse reasons.

Besides giving protection to the unprotected and unhappy members of the society and affording an outlet for laudable charity for charitably minded persons, these institutions, if run on proper national lines, can help the building of the nation.

Thus every State Government in India is required under this Bill to establish a Board of Control for orphanages and charitable homes in the State.

So far as the constructive side is concerned, no existing orphanage or charitable home is to be disturbed, but only its management is sought to be regularised through a managing committee to be elected as prescribed."

— Gaz. of Ind., 1959, Extra., Pt. II-Sec. 2, page 564.

**[THE] ORPHANAGES AND OTHER CHARITABLE HOMES  
(SUPERVISION AND CONTROL) ACT, 1960  
(ACT X OF 1960)<sup>a</sup>**

[9th April, 1960]

*An Act to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and for matters connected therewith.*

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows :—

[a] For Statement of Objects and Reasons, *See* Gaz. of India, Extra., Pt. II-S. 2, page 564.

**CHAPTER I  
PRELIMINARY**

**1. Short title, extent and commencement.**

(1) This Act may be called THE ORPHANAGES AND OTHER CHARITABLE HOMES (SUPERVISION AND CONTROL) ACT, 1960.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint.

[a] Up to 15-4-1961 no notification has appeared in the Official Gazette.

**2. Definitions.**

In this Act, unless the context otherwise requires,—

(a) “Board” means the Board of Control established under section 5;

(b) “certificate” means the certificate of recognition granted under section 15;

(c) “child” means a boy or girl who has not completed the age of eighteen years ;

(d) “home” means an institution, whether called an orphanage, a home for neglected women or children, a widows’ home, or by any other name, maintained or intended to be maintained for the reception, care, protection and welfare of women or children ;

(e) “manager” means a member of the managing committee appointed as such by the committee under section 20 ;

(f) “managing committee” means the committee of management referred to in section 20 ;

(g) “recognised home” means a home in respect of which a certificate has been granted ;

(h) “prescribed” means prescribed by rules made under this Act ;

(i) “woman” means a female who has completed the age of eighteen years.

**3. Act not to apply to certain institutions.**

Nothing in this Act shall apply to—

(a) any hostel or boarding house attached to, or controlled or recognised by, an educational institution ; or

(b) any protective home established under the Suppression of Immoral Traffic in Women and Girls Act, 1956 ; or

(c) any reformatory, certified or other school, or any home or workhouse, governed by any enactment for the time being in force.

**4. Effect of Act on instruments governing recognised homes.**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any instrument governing a recognised home.

## CHAPTER II

### THE BOARD OF CONTROL AND ITS POWERS AND FUNCTIONS

#### **5. Board of Control, its constitution, etc.**

(1) The State Government may, by notification in the Official Gazette, establish a Board of Control for the supervision and control of homes in the State.

(2) The Board shall consist of the following members, namely :—

(a) three members of the State Legislature to be elected by the members thereof; provided that where the State Legislature consist of two Houses, two members shall be elected by the members of the Legislative Assembly from among themselves and one member shall be elected by the members of the Legislative Council from among themselves ;

(b) five members of the managing committees in the State, to be elected by such committees from among themselves, each such committee having one vote only for this purpose ;

(c) the officer in charge of social welfare work in the State, to be nominated by the State Government ;

(d) six members to be nominated by the State Government, of whom not more than one shall be a member of Parliament from the State and not less than three shall be women.

(3) If for any reason the officer referred to in clause (c) of sub-section (2) is unable to attend any meeting of the Board, he may depute any officer subordinate to him to attend such meeting.

(4) The Chairman of the Board shall be elected by the members of the Board from among themselves :

Provided that at the time of the first constitution of the Board, one of the members of the Board shall be nominated by the State Government to be its Chairman.

#### **6. Term of office and casual vacancies.**

(1) Save as otherwise provided in this section, the term of office of a member of the Board shall be five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer :

Provided that the term of office of a member elected under clause (a) or clause (b) of sub-section (2) of section 5, or of a member of Parliament nominated under clause (d) of sub-section (2) of section 5, shall come to an end as soon as he ceases to be a member of the House of the State Legislature which elected him, the managing committee or Parliament, as the case may be.

(2) A member may at any time resign his office by giving notice in writing to the State Government and on such resignation being notified in the Official Gazette by that Government, the seat of such member shall become vacant.

(3) A casual vacancy in the Board shall be filled by fresh election or nomination, as the case may be ; and the term of office of a member elected or nominated to fill such vacancy shall be the remainder of the term of the member in whose place he is elected or nominated.

(4) Members of the Board shall be eligible for re-election or re-nomination.

(5) No act done or proceeding taken by the Board shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

#### **7. Functions of the Board.**

(1) It shall be the duty of the Board to supervise and control generally all matters relating to the management of homes in accordance with the provisions of this Act ; and exercise such other powers and perform such other functions as may be prescribed by or under this Act.

(2) In the performance of its functions under this Act, the Board shall be bound by such directions as the State Government may give to it.

*Note.*— The purpose of the Act is to regularise the management of orphanages and charitable homes through a managing Board constituted under this Act. The purpose is to see that more attention is paid to the constructive side of the institutions.

### **8. Power of the Board to give directions to manager of a recognised home.**

Subject to the directions, if any, given under sub-section (2) of section 7, the Board may, from time to time, give such general or special directions to the manager of a recognised home as it thinks fit for the efficient management of the home and the manager shall comply with such directions.

### **9. Power of inspection.**

Any member of the Board, or any officer of the Board authorised in writing by it in this behalf, by general or special order, may enter at all reasonable times any home for the purpose of ascertaining whether the provisions of this Act or of any rules, regulations, directions or orders thereunder are being complied with and may require the production, for his inspection, of any document, book, register or record kept therein and ask for any information relating to the working of the home :

Provided that no such member or officer shall enter any home or part thereof where there are females, except in the presence of two respectable women of the locality.

### **10. Funds of the Board.**

The funds of the Board shall consist of—

- (a) contributions, subscriptions, donations or bequests made to it by any person ; and
- (b) grants made to it by the State Government or any local or other public body.

### **11. Staff of the Board.**

Subject to such rules as may be made by the State Government in this behalf, the Board may, for the purpose of enabling it to perform efficiently its functions or exercise its powers under this Act, appoint such officers or other employees as it may think fit and determine their functions and conditions of service.

### **12. Delegation of powers.**

Subject to the control of the State Government, the Board may, by general or special order in writing and subject to such conditions and limitations, if any, as may be specified therein, delegate to the Chairman or any other member or any officer thereof such of its powers and functions under this Act, as it may deem necessary, for the efficient carrying on of its administration.

## **CHAPTER III RECOGNITION OF HOMES**

### **13. Homes not to be run without certificate.**

After the commencement of this Act, no person shall maintain or conduct any home except under, and in accordance with, the conditions of a certificate of recognition granted under this Act.

### **14. Application for certificate.**

Every person desiring to maintain or conduct a home shall make an application for a certificate of recognition to the Board in such form and containing such particulars as may be prescribed :

Provided that a person maintaining or conducting a home at the commencement of this Act shall be allowed a period of three months from such commencement to make an application for such certificate.

## **15. Grant or refusal of certificate.**

(1) On receipt of an application under section 14, the Board, after making such inquiry as it considers necessary, may, by order in writing, either grant a certificate or refuse to grant it.

(2) No order refusing to grant a certificate shall be made until an opportunity is given to the applicant to be heard in the matter and where a certificate is refused, the grounds for such refusal shall be communicated to the applicant in the prescribed manner.

(3) No fee shall be charged for the grant of a certificate.

(4) A certificate shall not be transferable.

## **16. Contents of certificate.**

(1) The certificate shall specify —

(a) the name and location of the recognised home ;

(b) the name of the manager thereof ;

(c) the nature of the home, whether for women generally or for widows or for children generally or for orphans or for one or more of these classes ;

(d) the number of inmates to be taken by the home ;

(e) the minimum standards regarding boarding, lodging, clothing, sanitation, health and hygiene which, having regard to the conditions of the locality in which the recognised home is situated and its resources, should be complied with in the home ;

(f) the standard of education or training to be provided for the inmates of the home, in case the education or training of its inmates is undertaken ; and

(g) such other conditions and particulars as may be prescribed :

Provided that there shall be deemed to be included in the certificate granted in respect of a home for females a condition to the effect that the person in charge thereof, whether called superintendent or by any other name, shall ordinarily be a woman.

(2) The Board shall not, ordinarily, permit any recognised home to admit as inmates, persons of different sexes, but may do so for reasons to be recorded and subject to such conditions and limitations as may appear to it to be in the public interest.

(3) Without the previous written consent of the Board, no recognised home shall—

(a) change its name or location as specified in the certificate in respect of it; or

(b) alter the purpose of any service specified therein.

## **17. Revocation of certificate.**

(1) The Board may, without prejudice to any other penalty to which a person to whom a certificate has been granted may be liable under this Act, revoke the certificate—

(a) if it is satisfied that the home is not being conducted in accordance with the conditions laid down in the certificate ; or

(b) the management of the home is being persistently carried on in an unsatisfactory manner or is being carried on in a manner highly prejudicial to the moral and physical well-being of the inmates ; or

(c) the home has, in the opinion of the Board, otherwise rendered itself unsuitable for that purpose :

Provided that no order of revocation shall be made under this sub-section until an opportunity is given to the person to show cause why the certificate should not be revoked ;

and in every case of revocation, the grounds therefor shall be communicated to the person in the prescribed manner.

(2) Where a certificate in respect of a home is revoked under sub-section (1), such home shall cease to function —

- (a) where an appeal has not been preferred under section 18 against the order of revocation, immediately on the expiration of the period prescribed for such appeal ;
- (b) where such appeal has been preferred, but the order of revocation is upheld, from the date of the appellate order.
- (3) On any home ceasing to function under sub-section (2), the Board may direct that any woman or child who is an inmate of such home shall be—
  - (a) restored to the custody of her or his parent, husband or lawful guardian, as the case may be, or
  - (b) transferred to another recognised home, or
  - (c) entrusted to the care of any other fit person :

Provided that no woman shall be entrusted to the care of any person other than a woman.

### **18. Appeals.**

Any person aggrieved by an order of the Board refusing to grant a certificate or revoking a certificate may, in such manner and within such period as may be prescribed, prefer an appeal to the State Government or to such authority as may be specified by it against such refusal or revocation :

Provided that the State Government or the authority so specified, as the case may be, may admit an appeal after the expiry of the period so prescribed, if it is satisfied that the applicant was prevented by sufficient cause from preferring the appeal in time.

### **19. Surrender of certificate and its effect.**

(1) The manager of a home, if specially authorised in this behalf by resolution of the managing committee, may, on giving six months' notice in writing to the Board of his intention so to do, apply for the withdrawal of the certificate granted in respect of that home and on the expiration of the said period from the date of notice, the certificate shall, unless before that time the notice is withdrawn, cease to have effect; and the home shall cease to function.

(2) No woman or child shall be received into any such home after the date of such notice ; but nothing in this section shall be construed to affect the obligation of the manager to comply with all the requirements of this Act and the rules, regulations, directions and orders thereunder until the certificate ceases to take effect under sub-section (1).

## **CHAPTER IV MANAGEMENT OF RECOGNISED HOMES**

### **20. Managing committee.**

(1) There shall be a managing committee in charge of the management of every recognised home and the members of the managing committee shall appoint a member thereof to be the manager of such home for the purposes of this Act.

(2) The constitution, powers and functions of the managing committee and the term of office of the members thereof shall be such as may be provided in the constitution pertaining to such home.

### **21. Duty of manager.**

It shall be the duty of the manager to comply with all the requirements of this Act and the rules, regulations, directions and orders thereunder in respect of every woman or child admitted into the recognised home until the woman is rehabilitated or the child completes the age of eighteen years or until the certificate ceases to have effect.

**22. Discharge of inmates of home.**

(1) Subject to the regulations, if any, made by the Board, if the managing committee of a home is satisfied that an inmate of the home has become fit to earn his or her livelihood or is otherwise fit to be discharged from the home, the manager may discharge such inmate.

(2) Notwithstanding anything contained in sub-section (1), no female inmate of a home shall be discharged or given in marriage or entrusted to the care of any other person unless such female has made a declaration before the Board or an officer specified by it in this behalf that she consents to such discharge, marriage or entrustment, as the case may be, and, if the inmate to be given in marriage is a minor, unless the Board or officer, as the case may be, has, after recording the reasons in writing, given its or his approval thereto.

**23. Reports regarding deaths of inmates.**

The manager shall, immediately after the occurrence of any death among the inmates of the home, send a written report thereof to the Board explaining the cause of death to the best of his knowledge.

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CHAPTER V  
MISCELLANEOUS

**24. Penalties.**

Any person who fails to comply with any of the provisions of this Act or of any rule, regulation, direction or order thereunder or any of the conditions of a certificate shall be punishable in the case of a first offence with imprisonment which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both, and in the case of a second or subsequent offence, with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

**25. Sanction for prosecutions.**

No prosecution under this Act shall be instituted except with the previous sanction of the District Magistrate or the Chief Presidency Magistrate, as the case may be.

**26. Persons performing functions under Act to be public servants.**

The members of the Board and every person empowered by the Board to exercise any of its powers under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

**27. Protection of acts done in good faith.**

No suit, prosecution or other legal proceeding shall lie against any person who performs any function under this Act for anything done or intended to be done in good faith under this Act or any rule, regulation, direction or order thereunder.

**28. Power of State Government to exempt homes.**

(1) If, after consultation with the Board, the State Government is satisfied that the circumstances in relation to any class of homes or any home are such that it is necessary or expedient so to do, it may, by notification in the Official Gazette, and for reasons to be specified therein, exempt, subject to such conditions, restrictions or limitations, if any, as it may think fit to impose, such class of homes or home, as the case may be, from the operation of all or any of the provisions of this Act or of any rule or regulation made thereunder.

(2) Every notification issued under this section granting an exemption shall be reviewed in consultation with the Board at intervals not exceeding two years, but nothing herein contained shall affect the power of the State Government to amend, vary or rescind any such notification at any time in consultation with the Board.

**29. Power of State Government to make rules.**

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) all matters relating to, or in connection with, elections to the Board under clause (b) of sub-section (2) of section 5 and the election of the Chairman;
- (b) the disqualifications for membership of the Board and the procedure to be followed in removing a member who is or becomes subject to any disqualification;
- (c) the funds of the Board;
- (d) the travelling and other allowances to be drawn by members of the Board;
- (e) the appointment of staff for enabling the Board to perform its functions efficiently under this Act and their recruitment and conditions of service;
- (f) the calling of returns and other information by the State Government from the Board and the managing committees;
- (g) the form in which an application for certificate of recognition may be made, the particulars to be contained in such application and the form in which, and the conditions subject to which, such certificate may be granted;
- (h) the maintenance of registers and accounts by the Board and the audit of its accounts;
- (i) any other matter which is to be, or may be, prescribed.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before the State Legislature.

**30. Power of the Board to make regulations.**

(1) The Board may, with the previous approval of the State Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder, for enabling it to perform its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the time and place of the meetings of the Board, the procedure to be followed in regard to the transaction of business at such meetings and the quorum necessary for the transaction of business at such meetings;
- (b) the maintenance of the minutes of meetings of the Board and the transmission of copies thereof to the State Government;
- (c) the appointment of sub-committees and local committees and of persons by the Board for the purpose of assisting it in performing its functions under this Act;
- (d) the supervision and control of the management of recognised homes;
- (e) the inspection of homes;
- (f) the calling of returns and other information by the Board from managing committees;
- (g) the reception, care, treatment, maintenance, protection, training, welfare, instruction, control and discipline of inmates in recognised homes;
- (h) visits to, and communication with, inmates of recognised homes and the grant of permission to such inmates to absent themselves for short periods;
- (i) the discharge of inmates from recognised homes, their transfer from one recognised home to another and the reports to be sent by managers to the Board;



(j) any other matter in respect of which provision is, in the opinion of the Board, necessary for the efficient supervision and control of homes.

(3) The State Government may, by notification in the Official Gazette, amend, vary or rescind any regulation which it has approved; and thereupon the regulation shall have effect accordingly, but without prejudice to the exercise of the powers of the Board under sub-section (1).

### 31. Repeals and savings.

(1) As from the date of the coming into force in any State of this Act, the Women's and Children's Institutions (Licensing) Act, 1956, or any other Act corresponding to this Act in force in that State immediately before such commencement, shall stand repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any direction given, any register or rule or order made or any restriction imposed) under the said Act shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions aforesaid, as if they were in force when such thing was done or such action was taken, and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

## [THE] OUDH LAWS ACT, 1876 (ACT XVIII of 1876)

[The Act printed here is as on 1-10-1960.]

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- Amended by Act XXXVIII of 1920;  
—Amended in U. P. by U. P. Acts III of 1912; IV of 1925; XV of 1939; XXIV of 1954.  
—Adapted by A. O., 1937; A. L. O., 1950; 2 A.L.O., 1956.  
—Repealed in part by Acts VI of 1878; XIV of 1878; III of 1879; XIII of 1879; IV of

38. Fines to be credited to such fund as Government appoints.

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## SUBSIDIARY RULES

39. Power to make rules.  
40. Publication of rules.  
41. [*Repealed.*]  
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## CHAPTER VI

## MISCELLANEOUS

*Honorary Civil Jurisdiction*

43. [*Repealed.*]

*Honorary police-officers*

44. Honorary police-officers.

*Creation and alteration of districts and sub-divisions*

45. [*Repealed.*]

THE FIRST SCHEDULE.—[*Repealed.*]

THE SECOND SCHEDULE.

## [THE] OUDH LAWS ACT, 1876

(ACT XVIII OF 1876)<sup>a</sup>

[10th October, 1876.]

*An Act to declare and amend the laws to be administered in Oudh.*<sup>b</sup>

## Preamble.

WHEREAS it is expedient to declare and amend the laws to be administered in Oudh; It is hereby enacted as follows:

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1873, Pt. V, p. 493; for Report of the Select Committee, see Gaz. of Ind., 1876, Pt. V, p. 710. [b] For construction of references to Oudh, see U. P. General Clauses Act, 1904 (I of 1904), S. 29.

## PART I

## PRELIMINARY

## 1. Short title.

This Act may be called THE OUDH LAWS ACT, 1876.

## Local extent.

It extends only to <sup>a</sup>[\* \* \*] Oudh<sup>b</sup>;

## Preamble — Note 1

[1] The Act is stated in preamble to be "an Act to declare and amend the laws to be administered in Oudh." This indicates that it

is only the courts administering laws in Oudh which could put in force the provisions of the Act. (10) 32 All 477 (479) (DB).

**Commencement.**

and it shall come into force on the passing thereof.

[a] The words "the territories for the time being administered by the Chief Commissioner of" were omitted by A. O. 1937 [1-4-1937]. [b] For construction of references to Oudh, see U. P. General Clauses Act, 1904 (I of 1904), S. 29.

**2. Repeal of enactments.** [*Repealed by the Repealing Act, 1936 (I of 1936), S. 2 and Sch.*].

**PART II****GENERAL LAWS TO BE ADMINISTERED IN OUDH**

**\*3. Statutory law to be administered in Oudh.**

The law to be administered by the Courts of Oudh shall be as follows :—

- (a) the laws for the time being in force regulating the assessment and collection of land-revenue ;
- (b) in questions regarding succession, special property of females, betrothal marriage, divorce, dower, adoption, guardianship, minority, bastardy family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—
  - (1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority;
  - (2) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to :
- (c) the rules contained in this Act :
- (d) the rules published in the <sup>A</sup>[Official Gazette] as provided by section 40, or made under any other Act for the time being in force in Oudh :

**Section 3 — Note 1**

[1] A plea of custom may be entertained in modification of the personal law, Hindu law or Mahomedan law, but not in entire abrogation of such law. 1928 Oudh 138 (139) [AIR V 15] : 3 Luck 154 (DB).

[2] The term "gift" in S. 3 includes gifts in trust which would, therefore, be governed by the Muhammedan law if both the parties are the followers of Islam. 1916 PC 27 (31) [AIR V 3] : 43 Ind App 212 : 38 All 627 : 19 Oudh Cas 192. (14 Oudh Cas 356, *reversed*.) + 1914 Oudh 167 (170) [AIR V 1] : 17 Oudh Cas 60.

[3] Gift in trust to the son should be considered as a gift within the meaning of section 3 of the Oudh Laws Act and, as such, to be operative must comply with the conditions prescribed by Mohammedan Law. 1923 Oudh 80 (83) [AIR V 10] : 25 Oudh Cas 291.

[4] Where a grant is substantially a gift of land to be held on zemindari tenure, under S. 3 the parties being Hindus the law to be administered in the case is the Hindu Law. (1900) 3 Oudh Cas 55 (63).

[5] Where a case is not provided for by any part of S. 3 of the Oudh Laws Act preceding cl. (g) of that section or any other law in force, the Court is justified in acting under cl. (g) by applying to the case the doctrine of the English Law. ('99) 2 Oudh Cas 239 (243).

[6] Where a Muslim wife had been allowed to take property upon the express agreement that it shall not be outside the family, those who seek to make title through a direct breach of this agreement could hardly support their claim by an appeal to any high-sounding principles. 1932 PC 158 (160, 161) [AIR V 19] : 59 Ind App 236 : 7 Luck 257.

[7] Though the Land Revenue Act is silent as to the date from which the rent fixed under S. 100 of the Act shall be payable, yet under S. 3 (g) of the Oudh Rent Act, an under-proprietor is liable for the rent fixed by the Deputy Commissioner from the date on which the revenue is assessed on the plot. ('06) 9 Oudh Cas 227 (229).

[8] The mere fact that the plaintiff along with his brother's sons has been living exactly like the members of a joint Hindu family and also the family has adopted many customs which are not in accordance with the Muhammadan Law, would not empower the managing member to bind his minor brother by an alienation of ancestral property of the family for a debt incurred by the deceased father because in such a case, it is the Muhammadan Law only which can be applied as is required under S. 3 (b) (2) of the Oudh Laws Act. ('08) 11 Oudh Cas 1 (6).

- (e) the Regulations and Acts specified in the second schedule hereto annexed, subject to the provisions of section 4, and to the modifications mentioned in the third column of the same schedule :
- (f) subject to the modifications hereinafter mentioned, all enactments for the time being in force and expressly, or by necessary implication, applying to <sup>b</sup>[the territories which, immediately before the 1st November, 1956 were comprised in Part A States and Part C States] or Oudh, or some part of Oudh :
- (g) in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

[a] The provisions of this section have been *repealed* in so far as they are inconsistent with the Muslim Personal Law (Shariat) Application Act, 1937 (XXVI of 1937); see S. 6 of that Act. [b] *Substituted* for "Part A States and Part C States" by 2 A. L. O., 1956 [1-11-1956].

#### 4. Validity of local customs and mercantile usages.

All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority.

### PART III CHAPTER I

#### DOWER AMONG MUHAMMADANS

#### 5. Muhammadan dower contracts how to be enforced.

Where the amount of dower stipulated for in any contract of dower by a Muhammadan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set-off, lien or otherwise to the defendant; but the amount of the dower to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife.

##### Rule applicable after husband's death.

This rule shall be applicable whether the suit to enforce the contract be brought in the husband's life time or after his death.

##### Section 4 — Note 1

[1] There is a customary right of privacy prevailing in Oudh which is so well established and known as not to require proof, in any case, by a party setting it up and the court itself may take judicial notice of the custom. 1926 Oudh 352 (352) [AIR V 13].

##### Section 5 — Note 1

[1] Section 5 lays down that the dower to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife. In determining what amount would be reasonable considering the means of the husband, the Court has to look to the means of the husband at the present time when the contract is sought to be enforced and not to his means at the time when the contract was entered into. 1929 Oudh 32 (34) [AIR V 16] : 4 Luck 193 \* 1931 Oudh 63 (65) [A I R V 18] (DB) \* 1924 Oudh 232 (233) [AIR V 11]. (Where the assets left by the husband were about Rs. 12,000 while the dower settled at the time of the marriage was Rs. 70,000 and the widow was childless

—Held, that Rs. 4000/- i. e., about one third of the assets was an equitable amount.) \* 1917 Oudh 392 (396) [A I R V 4] : 19 Oudh Cas 246 (DB). (If the amount is found to be excessive, there is no occasion to discuss the status of wife for the purpose of reducing the amount.) \* 1914 Oudh 131 (136) [AIR V 1] : 16 Oudh Cas 325 (DB). (Deceased leaving property worth over 3 lakhs of rupees — Mother of deceased only heir—Widow's claim for dower to the extent of a lakh and a quarter of rupees should be decreed.) \* 1914 Oudh 1 (16) [AIR V 1] (DB). (Where the property left by the deceased husband was estimated at 9 lacs of rupees—Held, that one lac of rupees was a reasonable and sufficient amount of dower to be awarded to the wife.)

[2] The principal matters to be considered in deciding whether a certain sum is excessive or not are the extent and nature of the claims of the various persons who as heirs are entitled to divide the estate. If it appears that the payment of a certain sum on account of dower would reduce the divisible estate to such an extent as to leave the heirs poorly

## CHAPTER II

## PRE-EMPTION

**6. Right of pre-emption.**

The right of pre-emption is a right of the persons hereinafter mentioned or referred to, to acquire, in the cases hereinafter specified, immovable property in preference to all other persons.

**Section 5 — Note 1 (contd.)**

provided for, such a sum would be considered excessive. 1917 Oudh 392 (397) [AIR V 4] : 19 Oudh Cas 246 (DB) \* 1926 Oudh 128 (129, 130) [AIR V 13].

[3] The expression "means of the husband" in S. 5 signifies the value of the husband's estate at the time of his death in cases where the claim is made by a widow. 1917 Oudh 392 (397) [AIR V 4] : 19 Oudh Cas 246 (DB).

[4] In considering whether the amount agreed upon is excessive with reference to the means of the husband in cases where the claim for dower is made by a widow, regard must be had to the value of the husband's estate at the time of his death. 1917 Oudh 392 (397) [AIR V 4] : 19 Oudh Cas 246 (DB).

[5] Where the husband's means of subsistence is an allowance made to him by his parents the court can in fixing the amount of dower take the means of the parents into account especially where the marriage had taken place while the bridegroom was still below the age of majority. 1919 Oudh 30 (31) [AIR V 6].

[6] The value of the assets of a deceased Mahomedan after deducting his one third share of mortgage debt amounted to Rs. 11,465-5-0. The amount of dower, settled at the time of the marriage, was Rs. 70,000/- and two dinars—*Held* having regard to the means of the husband and the status of wife, and the fact that they left no children, it would be desirable to award dower under S. 5 of the Oudh Laws Act, (XVIII of 1876) about one-third of that amount or roughly Rs. 4000. 1924 Oudh 232 (233) [AIR V 11].

[7] In determining a claim of dower, the question of the other liabilities, affecting the property of the deceased is wholly irrelevant. 1914 Oudh 131 (136) [AIR V 1] : 16 Oudh Cas 325 (DB).

[8] The Courts in Oudh have a discretion to award to a Muhammadan lady only so much of the stipulated amount of dower as the Court may consider reasonable with reference to the means of husband and the status of the wife. ('99) 21 All 17 (20) \* ('94) 21 Cal 135 (139, 140) : 20 Ind App 144 (PC).

[9] The fact that the husband has life interest in some property may be taken into consideration in determining what amount may reasonably be allowed on account of dower under S. 5. ('07) 10 Oudh Cas 241 (242).

[10] When a Muhammadan husband has promised a certain amount of dower, the facts that under S. 5 of the Oudh Laws Act, only a less amount would have been decreed if the

matter had come before the Courts and that such amount had been already realised by the wife and that even otherwise the claim to the balance of the amount had become barred at the time, cannot invalidate a transfer of property by the husband to the wife in lieu of a portion of the balance. 1925 Oudh 267 (268) [AIR V 12].

[11] The fact that the parties who were domiciled in Agra province entered into a marriage contract in Lucknow would not empower the Agra Courts to reduce the dower amount of the widow in a suit brought by her against the heirs of the husband. ('10) 32 All 477 (479) (DB).

**Section 6 — Note 1**

[1] Sections 6 and 9, when read together, give a definition of the right of pre-emption in both its aspects, that is, in relation to persons and also to property. 1930 Oudh 274 (275) [AIR V 17] : 5 Luck 12 (FB).

[2] The right of pre-emption is not a right to be substituted for a vendee in any particular sale deed; it is a right to acquire, in certain specified cases, immovable property in preference to all other persons. ('49) 1 L R (1949) All 604 (608) (DB).

[3] A right of pre-emption is a right to the benefit of a contract or a right of substitution entitling the pre-emptor by reason of a legal incident to which the sale itself was subject, to stand in the shoes of the vendee in respect of all rights and obligations arising from the sale under which he has derived his title. ('10) 13 Oudh Cas 219 (223, 224) (DB).

[4] It is impossible to regard the right of pre-emption as defined in S. 6 as one arising out of a mere offer and acceptance. A suit to enforce a right arising in this way is a suit to enforce a contract; a suit to enforce a right of pre-emption is a suit to vindicate the invasion of a special right conferred by statute. ('10) 13 Oudh Cas 219 (227) (DB).

[5] Section 6 is to be read along with S. 9 and it lays down the general principle that the whole body of co-sharers has a right of pre-emption as against an outsider. ('12) 15 Oudh Cas 389 (395) (DB).

[6] In the case of a town, lands outside the abadi which form a part of a revenue paying mahal are subject to the ordinary law of pre-emption as provided in Ss. 6 and 7 of the Oudh Laws Act because it is the abadi only which constitutes the town within the meaning of S. 8 of the Act. 1944 Oudh 27 (28) [AIR V 31] : 19 Luck 489.

[7] Where a property subject to a right of pre-emption is sold and after the sale the

## 7. Presumption as to its existence.

Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement-record or not, be presumed—

- (a) to exist in all village-communities, however constituted, and whether proprietary or under-proprietary, and in the cases referred to in section 40 of the Oudh Land-revenue Act,\* and
- (b) to extend to the village-site, to the houses built upon it, to all lands and shares of lands within the village-boundary, and to all transferable rights affecting such lands.

[a] See now the U. P. Land Revenue Act, 1901 (U. P. III of 1901).

### Section 6 — Note 1 (contd.)

vendee pays off incumbrances on that property this payment ought to be included in the purchase money specified in the decree for pre-emption. 1924 Oudh 1 (6) [AIR V 11] (DB).

[8] It cannot be said that no right of pre-emption arises in any case in which the vendor was out of possession and litigation would be necessary to recover possession of the property. 1922 Oudh 156 (158) [AIR V 9].

[9] To be subject to pre-emption under S. 6, the property must have been in actual possession of the vendor. ('06) 9 Oudh Cas 331 (337) (DB).

[10] Under the Oudh Laws Act, a right of pre-emption arises only when a person proposes to sell any property or when he forecloses a mortgage upon any property and in order to ascertain in any particular cases whether a right of pre-emption existed, it is necessary first to see whether there had been a sale or the foreclosure of a mortgage. 1927 Oudh 161 (161) [AIR V 14] (DB).

[11] A previous denial of title of the vendor does not deprive a person of a right of pre-emption under the Oudh Laws Act. A sale of a mere share in a law suit does not give rise to a right of pre-emption and the mere fact that legal proceedings are necessary to obtain possession of the property sold is no ground for holding that the sale does not give rise to a right of pre-emption. 1919 Oudh 58 (59) [AIR V 6] : 23 Oudh Cas 13:.

[12] When property which carries with it the right of pre-emption passes from one person to another the right also passes with it and the new holder of the property acquires the status of a co-sharer which his predecessor had possessed. Similarly when the property which bears the burden of pre-emption is transferred by any of the various modes of acquisition of the property known to law, such as gift, purchase, devise or inheritance, the burden is also transferred with it. The last vendee in a chain of successive vendees of a property which bears the burden of pre-emption, is therefore as liable to deliver the property to the legitimate pre-emptor as is the first vendee. 1930 Oudh 274 (275) [AIR V 17] : 5 Luck 12 (FB).

[13] The chapter does not apply to a transfer made by a Court sale but applies only to voluntary transfers by way of sale. No right

of pre-emption can be exercised in respect of such transfer. 1917 Oudh 158 (159) [AIR V 4].

## SECTION 7 — SYNOPSIS

1. Village Community.
2. Existence of custom or contract to the contrary.
3. Presumption as to existence of pre-emption.
4. Clause (b).

1. Village community.—[1] "The village community" has not been defined by the Act. The meaning of those words depends upon the construction of S. 7 (a) in the light of the following sections. The village community contemplated by S. 7 (a) refers to persons having proprietary or under-proprietary rights in the village. It does not include any one who happens to reside in the village but has no proprietary interest therein. S. 7 (a) contemplates a proprietary village community as distinguished from an under-proprietary village community. 1934 PC 153 (156) [AIR V 21] : 61 Ind App 235 : 9 Luck 407.

[See also ('09) 12 Oudh Cas 1 (12) (DB) + ('02) 5 Oudh Cas 266 (274, 275) (DB).]

[2] To maintain a right to pre-empt as a member of the village community the claimant must establish either that he is a superior proprietor or an under-proprietor. 1944 Oudh 263 (264) [AIR V 31] : 20 Luck 15 (DB).

[3] The Ss. 7 and 8 of the Oudh Laws Act, are not exhaustive and cases may arise where there is land which does not come within the boundaries of a town or a village community. ('09) 12 Oudh Cas 1 (7) (DB).

[4] Under-proprietors have a right under the Oudh Laws Act, to pre-empt a sale of proprietary tenure, their right however comes subsequent to that of the co-sharers. Where there are no co-sharers they will have an immediate right as being members of the village community. 1930 Oudh 428 (429) [AIR V 17] (DB).

[5] The expression "village communities" in S. 7 (a) of the Oudh Laws Act is wider in its scope than proprietary or under-proprietary communities. Hence a perpetual lessee with heritable and transferable rights is a member of village community within the meaning of S. 40, Oudh Land Revenue Act, and entitled to a right of pre-emption. 1934 Oudh 145 (148) [AIR V 21] (DB).

[6] A perpetual leaseholder who by his lease has acquired under-proprietary rights is

**Section 7 — Note 1 (contd.)**

a member of the village community, but he cannot be recognised as an under-proprietor when he derives his title from an under-proprietor who has not transferred to him his whole under-proprietary interest in the property conveyed nor can he be allowed to pre-empt as a member of the village community. 1944 Oudh 263 (264) [AIR V 31] : 20 Luck 15 (DB).

[7] The existence of separate revenue papers and the fact that land revenue is paid in respect of a Mahal in which the particular plot of land is situated as well as the continued existence of the abadi of a village lead to the inference that the village community continues to exist and hence the custom of pre-emption will be presumed to exist even though a part of the village area may have been included within the ambit of the town. 1947 Oudh 162 (163) [AIR V 34 C 60] : 22 Luck 204.

[8] Village community is necessary condition for a custom of pre-emption—Waste lands purchased for cultivation and inhabitation — Lands sold in distinct blocks to different persons — Neither the original purchaser nor purchasers from him form a village community. 1927 Oudh 227 (230) AIR V 14 (DB).

**2. Existence of custom or contract to contrary.** — [1] The Act did not in any sense purport to create a right of pre-emption. It merely recognised the custom already prevailing and laid down that a particular custom of pre-emption was to be presumed unless there was a custom or contract to the contrary, but that such right of pre-emption could only exist where there was a village community. 1927 Oudh 227 (229, 230) [AIR V 14] (DB).

[2] The fact that no one claimed pre-emption is not sufficient to justify an inference that no custom existed. 1916 Oudh 320 (321) [AIR V 3].

[3] The existence of pre-emption is presumed under S. 7 of the Act where the Wajib-ul-arz is silent on the point of the right of pre-emption. 1916 Oudh 320 (321) [AIR V 3] + 1928 Oudh 498 (499) [AIR V 15] (DB).

[4] The presumption as to a right of pre-emption is in the absence of a custom or contract to the contrary a statutory one created by S. 7 of the Oudh Laws Act, and an entry in a Wajib-ul-arz to the effect that every co-sharer is entitled to sell his share to whomsoever he pleased is sufficient to exclude the right of pre-emption. 1914 Oudh 165 (166) [AIR V 1] : 17 Oudh Cas 105.

[5] Wajib-ul-arz at the first settlement contained a clear entry to the effect that every co-sharer had power to sell or mortgage his share to whomsoever he likes. The subsequent wajib-ul-arz prepared at the time of partition contained an entry to the effect that all co-sharers had power to sell or mortgage their shares. Held that the omission of words "to whomsoever he likes" from the second wajib-ul-arz did not imply that the custom of excluding the right of pre-emption was abro-

gated by the second wajib-ul-arz. 1928 Oudh 498 (500) [AIR V 15] (DB).

[6] Where in a previous suit relating to a village a claim for pre-emption had been put forward and allowed, and it was contended in a subsequent suit for pre-emption relating to the same village that the previous decision proved the existence of the custom of pre-emption in the village, but it was found that in the previous suit no defence like that in the subsequent suit was put forward to the effect that the custom did not obtain in the village, it was held that the above previous decisions could not establish the custom of pre-emption in the village. 1914 Oudh 163 (166) [AIR V 1] : 17 Oudh Cas 105.

**3. Presumption as to existence of pre-emption.** — [1] Section 7 of the Oudh Laws Act provides for the raising of presumption as to the existence of the right of pre-emption in all village communities. The true test therefore is to determine whether a village community continues to exist. If it does the custom will still be presumed even though a part of the village area may have been included within the ambit of the town. 1947 Oudh 162 (163) [AIR V 34 C 60] : 22 Luck 204.

[2] Under S. 7 of the Oudh Laws Act, read with S. 40 of the Oudh Land Revenue Act (17 of 1876) the right of pre-emption should be presumed to exist not only in the case of under-proprietary communities, but also in the case of communities constituted by the holders of leases, which are transferable subject to the landlord's interference and are heritable. 1925 Oudh 527 (528) [AIR V 12] (DB) + 1935 Oudh 427 (428) : [AIR V 22] : 11 Luck 289 (DB).

[3] In a suit for pre-emption, the vendor of the house in dispute, although she was the owner of the materials of the house and may have a right to occupy the site, had no proprietary or under-proprietary right in the land of the village. Held, that the sale of the house gave the plaintiff, the proprietor of the village, no right to sue, under the Oudh Laws Act, to enforce a right of pre-emption. ('01) 4 Oudh Cas 26 (27).

**4. Clause (b).** — [1] Section 7 (b) applies to transactions by which proprietors create transferable rights of occupancy in another for a consideration. ('05) 8 Oudh Cas 121 (123) (DB). (Sale-deed creating but right in favour of purchaser—Government revenue of eight annas payable to seller—Suit for pre-emption — Pre-emption could be claimed under S. 7 (b).)

[2] The words "transferable rights" only refer to subject-matter of a transfer and not the mode or manner of the transfer. 1927 Oudh 161 (162) [AIR V 14] (DB).

[3] Even if it be granted that the standing trees are "immoveable property" and that the right of the planter of a grove in a village, who is entitled to transfer the trees is a transferable right affecting such land within the meaning of S. 7 (b), a sale by him of the grove, to be enjoyed as such, does not give rise to a right of pre-emption under the provisions of that Act. ('98) 1 Oudh Cas 284 (289) (DB).



**8. Its existence in towns to be proved.**

The right of pre-emption shall not be presumed to exist in any town or city, or any sub-division thereof, but may be shown to exist therein and to be exercisable therein by such persons and under such circumstances as the local custom prescribes.

**9. Devolution of right when property to be sold or foreclosed is a proprietary or under-proprietary tenure.**

If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or redeem such property belongs, in the absence of a custom to the contrary,—

- 1st, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor;
- 2ndly, to co-sharers of the whole mahal in the same order;
- 3rdly, to any member of the village-community; and
- 4thly, if the property be an under-proprietary tenure, to the proprietor.

Where two or more persons are equally entitled to such right, the person to exercise the same shall be determined by lot.

**Section 8 — Note 1**

[1] Section 8 clearly allows the right of pre-emption to exist in a town and even in a city. It only lays down that such a right must not be presumed to exist. 1929 Oudh 301 (303) [AIR V 16] (DB).

[2] Mere inclusion in a municipality is no test as to whether an area is or is not a town. 1929 Oudh 301 (302) [AIR V 16] (DB).

[3] The word "town" in S. 8 means nothing outside the urban area or abadi. 1941 Oudh 77 (78) [AIR V 28] : 16 Luck 230.

[4] The word "sub-division" in S. 8 of the Act includes a part made by a division of a town or a city and is not confined to a part made by division of part of a city into smaller parts. ('06) 9 Oudh Cas 211 (212).

[5] The exclusion laid down in S. 8 must be applied to the situation of the lands and not to the residence of a village community. ('09) 12 Oudh Cas 1 (12) (DB).

[6] The question whether any particular piece of land is situated within a town or not depends on whether it is part of an urban area or not, and it is a question of fact which has nothing to do with the contingency of its being included within the limits of a municipality for administrative purposes. ('04) 7 Oudh Cas 74 (77) (DB).

**SECTION 9 — SYNOPSIS**

1. Scope and applicability.
2. Sale.
3. Foreclosure.
4. Proprietary or under-proprietary tenure.
5. Co-sharers.
6. Sub-division of the tenure.
7. "In order of their relationship".
8. Co-sharers of the same mahal.
9. Member of Hindu joint family whether co-sharer.
10. Preferential right.
11. "Any member of village community".

**12. Proprietor.****13. Drawing of lots.****14. Denial of title.****15. Partial pre-emption.****16. Share in law suit.**

1. Scope and applicability. — [1] The provisions of Chapter II of the Oudh Laws Act apply to transfers of land by sale or mortgage. ('12) 15 Oudh Cas 389 (395) (DB) (Oudh) \* 1949 Oudh 19 (20) [AIR V 36 C 4] : 22 Luck 515 (DB).

[2] The right of pre-emption originates in a sale or mortgage of lands in a village or of transferable rights affecting such lands made by a member of the proprietary or under-proprietary body or an under-proprietor in a mahal or one of the holders of a heritable non-transferable lease. ('98) 1 Oudh Cas 75 (77).

[3] There can be no pre-emption of a sale of a protected land which is made by an agriculturist without the requisite permission of the Assistant Collector in accordance with S. 12 of U. P. Regulation of Agricultural Credit Act, 14 of 1940. 1949 Oudh 19 (20) [AIR V 36 C 4] : 22 Luck 515 (DB).

[4] The right of a person to pre-emption cannot be defeated by a decree obtained by another person in a suit to which the plaintiff in the second suit is not a party. ('04) 7 Oudh Cas 1 (3, 4).

[5] Right and liability of pre-emption pass with property and can be enforced by or against the last vendee. 1930 Oudh 274 (275) [AIR V 17] : 5 Luck 12 (FB) \* 1922 Oudh 289 (291) [AIR V 9] : 25 Oudh Cas 319 (DB).

[6] The whole notion underlying the right of pre-emption is that where there are co-owners of a definite portion of a village any of them is entitled to exclude outsiders by having a right to acquire any portion of the division in which he is an owner to the exclusion of other persons who are not co-owners in that particular division. ('13) 16 Oudh Cas 203 (205, 206).



**Section 9 — Note 1 (contd.)**

[7] There is nothing in the Act which overrides the fundamental principle of the law of pre-emption that a court should not grant a decree for pre-emption when it would place the plaintiff in a position he is not entitled to hold in the existing circumstances of the case. ('09) 12 Oudh Cas 229 (234) (DB).

[8] In a pre-emption suit in determining the right of the pre-emptor or of the vendee, the appellate court may consider any circumstances which have arisen during the pendency of the suit in appeal, even though these circumstances may have come into being subsequent to the decree of the first court. 1914 Oudh 238 (240) [AIR V 1] : 17 Oudh Cas 242.

[9] Section 9 must be interpreted as speaking at the time of the transfer with respect to which the claim to pre-emption is alleged to arise. ('07) 10 Oudh Cas 257 (262) (DB).

[10] The provisions of Ch. 2, Oudh Laws Act, mean that the persons who in S. 9 are described in a proleptic or anticipatory sense as having a right of pre-emption are invested with an actual right to pre-empt as soon as a sale to a stranger takes place. 1919 Oudh 62 (68) [AIR V 6] : 22 Oudh Cas 353 (DB).

[11] Section 9 is applicable not only where there are persons equally entitled to buy a property and the property has been sold to a stranger, or to a person whose right to acquire it is inferior to that of the persons who are equally entitled to pre-empt, but is applicable also to cases where two or more persons are equally entitled to buy the property and one or more of them has or have acquired it. 1929 Oudh 313 (314) [AIR V 16].

[12] The principles of the pre-emption in Agra as enunciated by the Allahabad High Court, cannot be made to affect the scope of Oudh Laws Act on pre-emption in Oudh. 1917 Oudh 214 (214) [AIR V 4] : 19 Oudh Cas 185n (DB).

[13] The right of pre-emption after it has once accrued cannot be defeated by anything that happens subsequently. 1944 Oudh 190 (193) [AIR V 31] (DB).

**2. Sale.** — [1] The right of pre-emption arises only in cases of sale or foreclosure and not in cases of lease, though perpetual, mortgage or gift. 1914 Oudh 360 (360) [AIR V 1] : 17 Oudh Cas 299 (DB). (8 Oudh Cas 121 and 14 Oudh Cas 41, *Dist.*)

[2] In order to attract the right of pre-emption under the Act, the sale need not be an out and out sale as distinguished from sale simpliciter. 1944 Oudh 190 (192) [AIR V 31] (DB) \* ('07) 10 Oudh Cas 374 (376) (DB).

[3] A sale of property not in actual possession of the vendors cannot be said to be the subject of pre-emption. ('06) 9 Oudh Cas 331 (337) (DB).

[4] Parties, who deliberately adopt a form of conveyancing, which gives rise to a right of pre-emption and thus induce third parties to embark on expensive litigation will not be permitted as against those parties to plead that the transaction was of a different nature. ('98) 1 Oudh Cas 75 (77).

[5] A transfer of a part on condition that a transferee shall pay the mortgage money over

the whole and also the rent for some period, is a sale and not gift. 1917 Oudh 36 (36) [AIR V 4] : 19 Oudh Cas 394.

[6] To determine if a transfer in lieu of dower gives rise to a right of pre-emption under the Oudh Laws Act the adequacy of consideration is material for it may or may not amount to a sale under the Act though it may be a Hiba-bil-Ewaz under the Muhammadan law. If a bona fide sale is intended a right of pre-emption would accrue irrespective of consideration. ('13) 21 Ind Cas 60 (61) (Oudh).

[7] When the right of a successful pre-emptor lapses by reason of his failing to execute his decree within the time allowed by law such lapse whether intentional or accidental does not amount to a resale of the pre-empted property so as to give rise to a right of pre-emption on its own account under S. 9. 1917 Oudh 80 (80) [AIR V 4].

[8] A sale by an occupier of a house in a village who has merely the ordinary rights of a raiyat in it does not give rise to a right of pre-emption exercisable under Chap. II of the Oudh Laws Act. 1918 Oudh 290 (291) [AIR V 5] (DB).

[9] It is settled law that a transfer by inheritance of the pre-emptor's property subsequent to the sale which is to be pre-empted, transfers to the heir the right of pre-emption. It is also settled law that a transfer of the pre-emptor's property by sale to a stranger subsequent to the sale to be pre-empted does not transfer the right of pre-emption to the vendee. 1922 Oudh 269 (290) [AIR V 9] : 25 Oudh Cas 319 (DB).

[10] A sale in favour of a member of a pre-empting class cannot be pre-empted by another member of the same class. 1925 Oudh 665 (666) [AIR V 12].

[11] A perpetual lease is not a sale and no right of pre-emption can be claimed in respect thereof. ('07) 10 Oudh Cas 348 (350) (DB).

[12] Section 9 is only applicable to a case where one tenure is sold and there is no provision in it for cases in which several tenures are sold by the same sale for one amalgamated price. ('49) ILR (1949) All 604 (608) (DB).

[13] Where a deed calling itself a lease has been executed and there is no fraud it is not open to the lessee subsequently to go behind this lease deed when the question of pre-emption of another land arises, and lead evidence to show that the deed was in fact a sale and claim to be a cosharer by reason of it and thus entitled to pre-empt. 1948 Oudh 7 (8) [AIR V 35 C 2] \* 1942 Oudh 55 (56) [AIR V 29] : 17 Luck 281.

[14] Where after a sale and delivery of possession a separate agreement is executed on the same day by the vendee agreeing to resell the property to the vendor on payment of the price within a fixed period, the transaction is a sale and an agreement to re-sell and not a mortgage by conditional sale. Hence it can be pre-empted under S. 9, Oudh Laws Act. 1944 Oudh 190 (193) [AIR V 31] (DB).

[15] An under-proprietor executed a deed described as patta Istimrari matahti by which

**Section 9 — Note 2 (contd.)**

heritable rights were conferred on the transferee in certain plots for a nazrana. The latter was to be in possession of the plots with full rights of transfer of all kinds. The transferee was to pay a nominal sum along with haq malikana lagan of the plots to the transferor and his heirs year after year and was given the rights to get her name mutated as under-proprietor in the Revenue papers. *Held* that the terms of the deed read as a whole showed that it was a permanent lease only and not a sale of under-proprietary rights and as such the transaction was not liable to pre-emption. 1948 Oudh 191 (192) [AIR V 35 C 72] : 23 Luck 249.

[See also 1914 Oudh 360 (360) [AIR V 1] : 17 Oudh Cas 299 (DB). (A grant of under-proprietary rights by means of pattas or leases of birt sankalp giving heritable and transferable rights in lieu of nazrana or premium taken in advance and an annual rent reserved thereby cannot be treated as a sale of either a proprietary or under-proprietary tenure.)]

[See however 1935 Oudh 217 (226) [AIR V 22] : 10 Luck 392 (FB).]

[16] The question whether it is a sale of a proprietary or under-proprietary tenure or not, must be determined primarily upon the construction of the deed of transfer. Certainly it is open to a vendee to show that the transfer which he has taken was not the sale of a proprietary or under-proprietary right. But to say that the transfer is one that might be avoided by a third party in certain contingencies can be no defence to a suit for pre-emption. All such questions whether there was or was not legal necessity for the sale, are, therefore, foreign to a suit for pre-emption. Hence a sale of proprietary tenure by a Hindu widow, even if not proved to be made wholly for legal necessity gives rise to a right of pre-emption under the Oudh Laws Act. 1946 Oudh 127 (129) [AIR V 33 C 48] : 21 Luck 190.

[But see 1916 Oudh 82 (83) [AIR V 3].]

[17] In considering whether a transaction is sale or not, the safest guide to the nature of the transaction is the deed itself. If it clearly purports by its own force to transfer the property from the ownership of the vendor to the ownership of the vendee, it should be regarded as a sale deed of that property. The nature of the transaction or the import of it cannot be changed merely because at the time when it was executed, it was necessary to launch a litigation in order to obtain possession of the property. 1945 Oudh 167 (169) [AIR V 32].

[18] Hiba-bil-ewaz is not a sale within the meaning of S. 9 of the Act and confers no right of pre-emption under Chap. 2 of the Act. 1916 Oudh 273 (274) [AIR V 3] : 18 Oudh Cas 67 \* 1926 Oudh 186 (187) [AIR V 13] : 29 Oudh Cas 108 : 1 Luck 83 (DB) \* ('01) 4 Oudh Cas 169 (171) \* ('98) 1 Oudh Cas 75 (77) (DB).

[19] A sale of an equity of redemption effected partly in lieu of money and partly in lieu of something computable in money or valued in money is subject to the right of

pre-emption under S. 9 of the Act, where the vendor was admittedly the owner of the property and there was no cloud over his title preventing him or his vendee from recovering the property from the mortgagees. ('13) 16 Oudh Cas 99 (102).

[20] In a suit for pre-emption in respect of property conveyed to the defendant by the Government for a nominal consideration—*Held* that as the deed of transfer had an outstanding element of grant by the Crown, the transfer was not a sale pure and simple and hence no right of pre-emption was exercisable over the property. 1927 Oudh 207 (208) [AIR V 14] (DB).

[See also 1933 Oudh 134 (141, 142) [AIR V 20] : 8 Luck 322 (FB). (Property compulsorily acquired by Secretary of State—Auction sale—Claim for pre-emption not sustainable.) \* (1900) 3 Oudh Cas 110 (118) (DB).]

[21] A person who has no right of pre-emption at the date of sale but who inherits the property by reason of the ownership of which the right of pre-emption arose, from a person who has such right can claim pre-emption. 1916 Oudh 247 (249) [AIR V 3] : 18 Oudh Cas 256 (DB).

[22] It is not forbidden to a person to circumvent the law of pre-emption by taking a transfer which falls short of a sale which may eventually have the same effect as a sale. 1928 Oudh 25 (26) [AIR V 15] : 2 Luck 416 (DB).

[23] Where property is transferred with all the usual incidents of a sale, the fact that the transfer masquerades under a cloak of a mortgage to defeat pre-emption will not prevent the pre-emptor from claiming the pre-emption, if he can show that a sale was really effected. The Court will look to the terms of the document, the surrounding circumstances and the previous and subsequent conduct of the parties. ('13) 21 Ind Cas 69 (70) (DB) (Oudh).

[24] Deed relinquishing all claims to property in return for some benefits—Transaction does not amount to sale within meaning of chapter II of the Act. ('04) 7 Oudh Cas 31 (33) (DB).

[25] It is not forbidden to a person to circumvent the law of pre-emption by taking a transfer which falls short of a sale though it may evidently have the same effect as a sale. A person, in order to defeat the right of pre-emption, may decide not to have a sale deed but to have a mortgage deed with onerous conditions making its redemption difficult or might have a lease executed in his favour making himself liable to pay a small sum, however insignificant as rent. 1928 Oudh 472 (474) [AIR V 15] : 4 Luck 68 (DB).

**3. Foreclosure.** — [1] The right of pre-emption, in respect of a deed of mortgage arises, under S. 9 of the Oudh Laws Act when the mortgage is foreclosed. It also arises where it is shown that the transaction was an out and out transfer and the right of redemption reserved was merely nominal. In order to establish this it must be shown that the terms of the transaction are such as to render it

**Section 9 — Note 3 (contd.)**

practically impossible for the mortgagors ever to recover the property. If a genuine right of redemption is reserved there is nothing in the parties resorting to a mortgage instead of a sale for the purpose of avoiding pre-emption. 1921 Oudh 201 (201, 202) [AIR V 8] : 24 Oudh Cas 353 (DB).

[2] Where a pre-emptor happens to be a mortgagee of the property sought to be pre-empted the condition in the sale deed as to redemption of the mortgage as economically as possible does not affect the nature of the transaction as it appears from the deed so as to debar the pre-emptor from claiming pre-emption of the property sold. 1919 Oudh 62 (66) [AIR V 6] : 22 Oudh Cas 353 (DB).

**4. Proprietary or under-proprietary tenure.** — [1] Under S. 9 of the Oudh Laws Act, only proprietary or under-proprietary tenures can be the subject of pre-emption and the actual right that can be pre-empted is only the proprietary or under-proprietary tenure and not any of the rights mentioned in S. 40 of the Oudh Land Revenue Act, 1876. Hence, where a permanent lease is executed by the under-proprietor in favour of a third person, the right created by it cannot be pre-empted. 1950 All 209 (201) [AIR V 37 C 75].

[2] The provisions of the Act contained in S. 9 make no reference to the term for which the proprietary or under-proprietary tenure is held. All that is required is that the property sold should be a proprietary or under-proprietary tenure. 1946 Oudh 127 (128) [AIR V 33 C 48] : 21 Luck 190.

[3] Section 9 shows that in order to entitle a plaintiff to a decree for pre-emption the property sold or foreclosed must be a proprietary or under-proprietary tenure "or a share of such a tenure." If the property foreclosed is only an interest for life it cannot be regarded as a proprietary tenure. 1931 Oudh 358 (364) [AIR V 18] : 6 Luck 715 (DB).

[4] On a proper interpretation of S. 9 of the Oudh Laws Act, an under-proprietary tenure may be any area of lands, whether constituting an entire mahal or only a small portion thereof. 1922 Oudh 101 (102) [AIR V 9].

[5] No right to pre-empt exists in a person who has got no proprietary right in a village. 1927 Oudh 367 (368) [AIR V 14] : 2 Luck 703 (DB).

[6] Pukhtadar is a class of under-proprietors. 1942 Oudh 113 (114) [AIR V 29] : 17 Luck 412.

**5. Co-sharers.** — [1] The word "co-sharer" implies that there must be co-relation between the vendor and the pre-emptor by virtue of their common capacity. A person who is a co-sharer at the time of the sale may lose his rights, if any, afterwards by virtue of his conduct or by reason of his ceasing to be a co-sharer after the sale. If he was not a co-sharer at the time of the sale his subsequent acquisitions cannot clothe him with a right which he did not possess at the date of the sale or at the time when the cause of ac-

tion for the suit accrued. 1916 Oudh 301 (302) [AIR V 3] : 19 Oudh Cas 110.

[2] The view that no person is a co-sharer in a tenure whose interest in that tenure is not a definite fraction of the whole cannot be entertained. (02) 5 Oudh Cas 399 (401).

[3] The right of pre-emption is given to co-sharers even when their names are not recorded in revenue records. 1928 Oudh 486 (487) [AIR V 15] : 3 Luck 430 (DB) + 1928 Oudh 592 (592) [AIR V 13] (DB). (Father and sons constituting joint Hindu family—Father alone recorded as co-sharer—Property purchased from joint family—Sons are co-sharers for contesting claim for pre-emption.)

[4] In order to determine whether a person is a co-sharer or not, the test is the liability to pay Government revenue. 1927 Oudh 514 (515) [AIR V 14] (DB) + (04) 26 All 574 (580) : 30 Ind App 212 (PC).

[5] To be co-sharer a person need not be so recorded. 1920 Oudh 265 (268) [AIR V 16] : 4 Luck 370 (FB).

[6] Where the vendor and the pre-emptor are co-sharers in an under-proprietary tenure and the vendee is a co-sharer in the proprietary tenure in which the under-proprietary tenure is situated, the pre-emptor comes within first clause of Section 9 and has a preferential right. He and the vendee do not come in clause (3) as members of the village community. 1922 Oudh 101 (102) [AIR V 9].

[7] A pre-emptor does not lose his right of pre-emption by reason of the vendee becoming a co-sharer after the date of the sale but before the date of the pre-emption suit. 1919 Oudh 62 (67) [AIR V 6] : 22 Oudh Cas 353 (DB).

[8] The mere fact that some shamilat land appertaining to one patti is thrown into another patti in which a vendee is a co-sharer, does not make the latter a co-sharer in the former patti. 1917 Oudh 36 (37) [AIR V 4] : 19 Oudh Cas 394.

[9] A co-sharer cannot defeat the suit brought by a pre-emptor by acquiring the position of a co-sharer during the pendency of the suit. 1930 Oudh 428 (429) [AIR V 17] (DB).

[10] It cannot be stated as a general proposition that shamilat land only means land which though undivided, pertains to the same patti, or putting it in another form, that each patti includes a portion of the shamilat land. Where plots in a patti and in shamilat patti are sold to a relative of the vendor who is a co-sharer in a different patti and in the shamilat patti, a co-sharer in the same patti as well as another patti and shamilat patti cannot pre-empt the land sold in the shamilat patti. 1942 Oudh 117 (120) [AIR V 29] : 17 Luck 435 (DB).

[11] The onus of establishing that he plaintiff in a suit for pre-emption is a co-sharer and entitled to pre-empt is on the plaintiff and it is not discharged by the mere fact that in the revenue papers his name was entered as a co-sharer. (13) 18 Ind Cas 386 (388) (Oudh).

**6. Sub-division of the tenure.** — [1] The word "sub-division" in S. 9 must be inter-

**Section 9 — Note 6 (contd.)**

preted in the same sense which it bears in S. 8. ('13) 16 Oudh Cas 203 (205).

[2] The sub-division contemplated by S. 9 are units bearing the relation one to another of having been called into existence by one and the same act or event of sub-division, whatever be the purpose of such sub-division. 1925 Oudh 527 (529) [AIR V 12] (DB).

[3] The word 'sub-division' in S. 9 has no technical meaning nor is it confined to a portion of a village described as patti in the Revenue records but where separate villages are component parts of a mahal, each village is a sub-division. ('12) 13 Ind Cas 490 (491) (Oudh).

[4] "Tenure" under S. 9 of the Act is the proprietary or the under-proprietary tenure in which the property sold may be comprised and the sub-division thereof would be a patti or thok or other defined part made by the division of that tenure. No person, who is not a co-sharer in a part or sub-division of the tenure in which the land sold is included, has a right of pre-emption under cl. (1). ('13) 20 Ind Cas 474 (474) (Oudh).

[5] Distribution of the revenue is not essential in order to constitute sub-divisions of a tenure. ('13) 16 Oudh Cas 202 (205).

[6] Section 9 of the Oudh Laws Act will allow a right of pre-emption to be exercised by a co-sharer of the sub-division of a tenure resulting from a lease, which is non-transferable except subject to the lessor's interference and which is heritable. 1925 Oudh 527 (529) [AIR V 12] (DB).

[7] Where a village was divided into two thoks of two pattis each, and one of the pattis was further sub-divided into khata, each khata consisting of a definitely assigned area : *Held* that each khata was a sub-division within S. 9 of the Act, and it was not essential that a separate amount of revenue on each khata should be shown in the village papers. ('13) 16 Oudh Cas 203 (205, 206).

[8] Though the liability to pay Government Revenue may remain joint whenever an under proprietary village is divided into mahals and sub-divided into pattis there come into existence sub-divisions of tenure which should be treated as separate entities for the purposes of S. 9 of the Oudh Laws Act. 1919 Oudh 315 (316) [AIR V 6] : 22 Oudh Cas 97.

[9] Birt-dars holding on behalf of pukhtadars and having no right of pre-emption in case of sale of proprietary or under-proprietary rights, except as members of the village community are in no sense co-sharers of a sub-division of a tenure. ('13) 20 Ind Cas 474 (479) (Oudh).

[10] Where the only division of a village is into proprietary mahals and there is no under-proprietary mahal which has been divided into khata there being merely isolated under-proprietary holdings or khata, the under-proprietary khata cannot be considered to be sub-divisions of the proprietary mahals within cl. 1 of S. 9. In such a case one under-proprietor cannot claim a preferential right over another for the purpose of pre-emption. 1944

Oudh 160 (161, 162) [AIR V 31] : 19 Luck 510 (DB).

[11] Joint ownership in Shamilat khata by a co-sharer does not make him co-sharer in sub-division, if he owns no land in the khata a part of which is sold. 1919 Oudh 367 (367) [AIR V 6].

[12] Where it appeared from a later khewat that a joint khata had been split up into two, one in favour of the vendor, the other in favour of the pre-emptor and the rent had been apportioned between the two and the apportionment had never been questioned by the pre-emptor. *Held*, that the parties had ceased to be co-sharers of the sub-division and that the pre-emptor could claim pre-emption not under cl. (1) but under cl. (3) of S. 9 as members of a village community. 1931 Oudh 316 (317) [AIR V 18] (DB).

[13] The word sub-division in cl. (1) of S. 9 of the Oudh Laws Act should be literally construed so as to include an under-proprietary khata which is a unit or component part of an under-proprietary tenure in a mahal. So when the property sold forms part of an under-proprietary khata and both the pre-emptor and the vendee are co-sharers in that khata, they are co-sharers in a sub-division of the under-proprietary tenure under this first clause. 1942 Oudh 113 (114) [AIR V 29] : 17 Luck 412.

[14] An arrangement by which the co-sharers agree to collect certain portions of the rent of one tenant does not amount to a 'sub-division of a tenure' within meaning of S. 9. ('98) 1 Oudh Cas 45 (47).

[15] The plaintiffs and one B brought separate suits for pre-emption in respect of a certain land which was divided into two mahals, viz., mahal mustaqil which was an imperfect pattidari and mahal intimali which was a pure zamindari mahal. In the mahal mustaqil there were two pattis, the plaintiff's having a share in the one and B in the other. B was related to the vendors, but there was no proof that the plaintiffs were in any way related to them. *Held*, that the patti in which the plaintiffs had a share was a sub-division of the mahal within the meaning of cl. (1). ('04) 7 Oudh Cas 129 (132).

**7. "In order of their relationship."**

[1] Clause (1) of S. 9 means that amongst co-sharers in the sub-division who are related, priority is to be determined by nearness of relationship and that co-sharers in the sub-division who are not related can claim under this clause but after those who are related, thus—nearly related—less nearly related—not related. ('04) 7 Oudh Cas 129 (132).

[2] The kind of relationship contemplated by S. 9 is consanguinity from a common stock. ('04) 7 Oudh Cas 6 (7) \* 1949 All 325 (326) [AIR V 36 C 126] \* 1927 Oudh 474 (475) [AIR V 14] : 2 Luck 736 (DB) \* ('11) 14 Oudh Cas 193 (194) \* ('01) 4 Oudh Cas 397 (405).

[3] The relationship mentioned in S. 9 of the Oudh Laws Act is not confined to relationship through males. The test laid down by the section is nearness in point of relationship.

**Section 9 — Note 7 (contd.)**

and not the position of the parties in the line of inheritance. ('11) 14 Oudh Cas 193 (194).

[4] Section 9 of the Act only contemplates a legitimate relationship and therefore illegitimate sons, who are entitled only to maintenance and not to the inheritance, have no better right to pre-emption than a legitimate collateral relation. 1914 Oudh 243 (243) [AIR V 1] : 17 Oudh Cas 250.

[5] The wife of one vendor and co-wife of the other does not come within the "order of relationship" referred to in S. 9 cl. (1). ('01) 4 Oudh Cas 397 (405).

[6] Relationship alone is not considered to be sufficient to confer a right of pre-emption on any individual. The person claiming the right by relationship must be a co-sharer in the village. 1927 Oudh 367 (368) [AIR V 14] : 2 Luck 703 (DB).

[7] The words "in order of their relationship" in S. 9 (1) do not refer only to such a class of persons amongst whom, on the fiction that the vendor was dead and the inheritance opened on the date of the sale, the heir or the heirs of the vendor exist. Those words simply mean according to the degree in the line of relationship with the vendor. The circle of relationship is much wider than the circle covering the heir or the heirs only, and in the law of pre-emption as enacted in the provision of Chapter 2 Oudh Laws Act, 1876, there is nothing to justify the courts to interpret in order of their relationship in the restricted sense. 1927 Oudh 474 (475) [AIR V 14] : 2 Luck 736 (DB).

**8. Cosharers of the same mahal. —**

[1] 'Mahal' means land separately assessed to, or held under separate engagement for, the revenue and for which there is a separate record of rights. ('10) 32 All 351 (362) : 13 Oudh Cas 165 : 37 Ind App 124 (PC) \* 1919 Oudh 62 (66) [AIR V 6] : 22 Oudh Cas 353 (DB).

[2] The words "cosharers of the whole mahal" in the second clause of S. 9 imply that there must be a co-relation between the vendor and pre-emptor by virtue of this common capacity. ('07) 10 Oudh Cas 257 (261) (DB).

[3] The expression "co-sharers of the whole mahal" as used in S. 9 of the Oudh Laws Act, includes a person whose share in the mahal consists of a separate chak; the circumstance of his being non-resident does not seem to affect, or even bear upon the language of the enactment. ('04) 26 All 574 (580, 581) : 30 Ind App 212 : 7 Oudh Cas 284 (PC).

[4] A person is a cosharer whether the property in virtue of the ownership of which he is a cosharer is acquired in one way or in another. 1922 Oudh 289 (292) [AIR V 9] : 25 Oudh Cas 319 (DB).

[5] A cosharer in an under-proprietary mahal falls under the category of the persons referred to in S. 9, cl. (2) and can enforce his right of pre-emption, if he is related to the vendor as against a person who is a cosharer in the same mahal but is not related to the vendor or is a cosharer in another under-

proprietary mahal. 1919 Oudh 315 (316) [AIR V 6] : 22 Oudh Cas 97.

[6] When the property, the ownership of which confers on a person the capacity of a cosharer, is transferred, the transferee acquires the status of a cosharer subject to all the obligations or liabilities with which the property is burdened. 1922 Oudh 289 (292) [AIR V 9] : 25 Oudh Cas 319 (DB).

[7] The arrangement under which the plaintiff and the defendants held the under-proprietary interest in the villages in suit under the defendant as talukdar, and under which a half of the taluk was assigned to their predecessors in under-proprietary right, on their agreeing to pay the Government revenue plus malikana to the talukdar, did not constitute them cosharers in the mahal within the meaning of S. 9 of the Oudh Laws Act. ('10) 32 All 351 (363) : 37 Ind App 124 : 13 Oudh Cas 165 (P.C.).

[8] Lands held in under-proprietary tenure situate in a village consisting of only one mahal, within S. 9 were sold to persons who owned a proprietary share in the village but not related to the vendor—*Held*, that the proprietors who were related to the vendors could pre-empt the stranger sharers. 1914 Oudh 405 (406) [AIR V 1] : 17 Oudh Cas 339.

[9] When a proprietary tenure is sold, an under-proprietor would not come within cl. 2 of co-sharers of the whole mahal. Only the proprietor would come within cl. 2. The under-proprietors would come within cl. 3 as members of the Village community. 1925 Oudh 538 (538) [AIR V 12].

[10] Where there has been a perfect partition in a village, a proprietor in one mahal has a right to pre-empt property in another mahal as against a person who has nothing to do with the village. ('04) 7 Oudh Cas 206 (207).

[11] Pre-emption, suit for—'Mahal', what constitutes—Co-sharer of mahal—Agreement to pay land-revenue in mahal—Land Revenue Act (Oudh), Ss. 15 and 220—Rule for amendment of land-revenue—Evidence—Secondary evidence, admissibility of—Evidence Act, S. 91—The plaintiff brought a suit for pre-emption against the defendants (the vendor and the vendee) in respect of a village on the allegation that he was a co-sharer of a mahal comprising nine villages, one of which was the village in dispute. There was evidence that, at the recent settlement, land-revenue was assessed on each of the nine villages and that the aggregate amount of such assessments was assessed on the local area comprising those villages. According to the malguzari and Mahalwar register and other evidence, the plaintiff and defendant (vendor) were jointly and severally liable for the aggregate amount of the assessments on the nine villages. But no engagement in writing on the part of those persons promising to pay such aggregate amount was adduced in evidence—*Held*, that the local area comprising nine villages did not constitute a mahal within the meaning of S. 9 of the Oudh Laws Act and that the plaintiff was not a co-sharer of the whole mahal within

**Section 9 — Note 8 (contd.)**

the meaning of that section. ('01) 4 Oudh Cas 365 (368).

**9. Member of Hindu joint family whether cosharer.** — [1] It is open to a member of a joint Hindu family to acquire by pre-emption a portion of the property belonging to the joint family of which he happens to be member, when the said property has been sold by the manager of the family. 1929 Oudh 265 (267) [AIR V 16] : 4 Luck 370 (FB).

[See also 1922 Oudh 115 (117) [AIR V 9] : 25 Oudh Cas 57. (Joint family property sold by member of joint family — Suit for pre-emption by another member is maintainable.)]

[2] Section 9 of the Act includes a member of a joint Hindu family with a share in the joint family property, as a co-sharer of the sub-division where the property is situated in spite of his name not appearing in the khewat. 1917 Oudh 245 (247) [AIR V 4] : 19 Oudh Cas 306 (DB).

[3] Foreclosure decree against some members of Hindu joint family — Others are not co-sharers — (Dalal Offg., J. C.) dissenting — Where a foreclosure decree is passed against some members of a Hindu joint family without making the others parties and the joint family owns property other than that foreclosed the members not made parties are not cosharers entitled to pre-empt the property within the meaning of S. 9. 1925 Oudh 352 (359) [AIR V 12] : 26 Oudh Cas 139 (DB).

**10. Preferential right.** — [1] Where there are no co-sharers in the proprietary mahal a plot in which is sold, the under-proprietor in the same mahal has no preferential right of pre-emption as against a co-sharer in a different proprietary mahal. ('46) 21 Luck 248 (251).

[2] Where a village is divided into proprietary mahals only one under-proprietor cannot claim a preferential right over another for the purpose of pre-emption because his under-proprietary holding is situated in the same proprietary mahal as the land sold while that of the vendee is not. 1944 Oudh 160 (161, 162) [AIR V 31] : 19 Luck 510 (DB).

[3] If every khata in the village is distinct without any joint right or joint obligation with the other khatas every khata would be in the position of a separate mahal and the co-sharers of every khata would be separate and independent. Under these circumstances among the parties who are members of the village community so far as the right of pre-emption is concerned no right of preference is given on account of relationship. 1923 Oudh 159 (160) [AIR V 10].

[4] In accordance with the provisions of S. 9 it is possible for one cosharer to claim preference over another. ('12) 15 Oudh Cas 389 (395) (DB).

[5] A cosharer in a sub-division of a mahal who is not related to the vendor has a better right of the pre-emption than a cosharer of the whole mahal who is related to the vendor. ('04) 7 Oudh Cas 129 (131).

[6] Where the vendee is the son of the vendor's father's brother and the pre-emptor is

the brother of the vendor's mother, but both are co-sharers, the pre-emptor is not nearer in degree to the vendee and he cannot, therefore, succeed. 1927 Oudh 474 (476) [AIR V 14] : 2 Luck 736 (DB).

[7] The law clearly requires the selection of one person of the nearest degree or by lot where there are several persons of equal degree in relationship to the vendor for the purpose of giving preferential right to buy. This in the very nature of things, implies that the competitors and the vendors are descended from a common stock. 1927 Oudh 474 (475, 476) [AIR V 14] : 2 Luck 736 (DB).

[8] Nearness in degree of relationship is the only test for determining the preferential right to pre-emption. 1927 Oudh 474 (475) [AIR V 14] : 2 Luck 736 (DB).

[9] The tenure which had been sold was a proprietary tenure. There was only one mahal in which the plaintiff pre-emptor was a co-sharer of proprietary rights and the vendees were under-proprietors. Held, that the plaintiff had a preferential right to pre-emption. 1925 Oudh 538 (539) [AIR V 12].

[10] Where A who was entitled to pre-empt had agreed with B a stranger to transfer his (A's) interest in the pre-empted property after pre-emption, and both A and B sued as plaintiffs for pre-emption. Held that though B was subsequently left out of the suit yet as a man cannot be allowed to do by indirect means what is forbidden to be done directly A also should not be allowed to pre-empt because the result in that case would be that B would get the property in preference to the vendee. 1924 Oudh 420 (421) [AIR V 11] : 27 Oudh Cas 137 (DB).

[11] If the pre-emptor claims a preferential right under S. 9 cl. (2) the onus lies upon him to establish that there is an under-proprietary mahal of which he is a co-sharer. 1930 Oudh 90 (91) [AIR V 17] : 5 Luck 539 (DB).

**11. "Any member of village community."** — [1] A village community under the Oudh Laws Act consists of the whole body of persons possessing rights as proprietors, under-proprietors or heritable lessees in village lands. 1928 Oudh 501 (503) [AIR V 15] (DB).

[2] Only those persons can be regarded as being members of the village community who have some interest in the village estate. 1934 Oudh 145 (149) [AIR V 21] (DB).

[3] The residence in the village is not a necessary qualification for membership of a village community for the purposes of S. 9. ('04) 7 Oudh Cas 275 (283) (DB).

[4] After the enactment of S. 9, previous decrees of settlement or other Courts would cease to be of value as against other members of the same village community unless they could be appealed to as evidence of custom. ('09) 12 Oudh Cas 220 (224) (DB).

[5] Where the whole talukdari mahal containing several villages has been sold by one deed, the members of the under-proprietary village community of different villages have not, a right of pre-emption under the Oudh Laws Act. Where the portion of the superior tenure is for the sale, no right of pre-



**Section 9 — Note 11 (contd.)**

emption exists to an under-proprietor. 1934 P C 153 (155) [AIR V 21] : 61 Ind App 235 : 9 Luck 407. [AIR 1930 Oudh 428, *Reversed*.]

[6] Four mahals were amalgamated as a fiscal whole, i. e. though each Mahal was separately assessed to land revenue, yet default of land revenue over any Mahal could be recovered from a sharer in any one of the Mahals. *Held*, that there was one village community for the whole of the four mahals and a sharer in any one of the Mahals was a member of that village community. 1928 Oudh 501 (503) [AIR V 15] (DB).

[7] Where an estate is subdivided into mahals and one of such mahals comprises villages and each village retains its separate boundaries and separate maps, and separate books are prepared for each mahal, an amalgamation of the villages does not constitute one village community. 1934 Oudh 145 (150) [AIR V 21] : 9 Luck 670 (DB).

[8] Reading the words "any member of the village community" in S. 9 in connection with the definition or description of village communities contained in S. 7, it appears to be reasonably clear that an under-proprietor is a member of the village community within the meaning of S. 9. ('02) 24 All 420 (422) (FB).

[9] The plaintiff brought a suit for pre-emption in respect of an under-proprietary interest in a village of which he was the superior proprietor. The vendee held under-proprietary rights in the village but neither he nor the plaintiff resided in the village. *Held*, that, under S. 9 of the Act, the plaintiff and the vendee were members of the village community and were equally entitled to pre-empt the property. ('06) 9 Oudh Cas 271 (272) (DB) + 19 '0 Oudh 90 (92) [AIR V 17] : 5 Luck 539 (DB).

[10] An under-proprietor in one of the mahals of a perfectly divided village sold some land to a co-sharer in another mahal. The plaintiff, a birt-holder in the mahal in which the land was sold, sued for pre-emption of the land. It was held that the plaintiff was not a co-sharer of the tenure in which the property sold was situate but he and the vendee came under the definition of a village community given in S. 9 (5). ('12) 13 Ind Cas 631 (632) (Oudh).

[11] Where land is sold by an under-proprietor, the pre-emptor and vendee come under the definition of "Members of a village community" within the meaning of S. 9 of the Act and the right to purchase must be determined by lot. ('12) 13 Ind Cas 631 (632) (Oudh).

[12] An entire mahal, the property of an estate, was sold by the Court of Wards on behalf of the proprietor of that estate to a stranger. The plaintiff, an under-proprietor in the mahal claimed pre-emption under S. 9, cl. (3) of the Oudh Laws Act XVIII of 1876. The question was whether his status as an under-proprietary tenant constituted him a "member of the village community" under cl. (3) of S. 9 of the Act. *Held* that it did constitute him as such and that, consequently,

he was entitled to pre-empt. ('02) 24 All 420 (423) (FB).

[13] Under S. 9 an under-proprietor of certain specified plots in a mahal of a village and the proprietor of another mahal in the same village are both members of the village community and neither has a right of pre-emption superior to that of the other. 1918 Oudh 237 (240) [AIR V 5] (DB).

[14] The village in which the land in a suit for partition was situated consisted of two proprietary mahals one of which was called Mahal M. The parties to the suit for pre-emption and several other persons sued for under-proprietary rights in M. The suit was settled by compromise under which each of the plaintiffs obtained under-proprietary rights in separate and specific plots of land. The existence of one mahal only was disclosed by the evidence and that was a mahal which was the property of the superior proprietor who had no co-sharer. It was held that the parties were not co-sharers in a tenure of any description but were members of the same village community and, as such, entitled to claim pre-emption under the last part of S. 9. ('02) 5 Oudh Cas 399 (402).

[15] A grove-holder who is not responsible for the revenue assessed on the village can only pre-empt property as a member of the village community mentioned as the third class of persons entitled to pre-empt under S. 9 of the Oudh Laws Act, inasmuch as he cannot be called a co-sharer of the mahal. 1944 Oudh 27 (28) [AIR V 31] : 19 Luck 489 (DB).

[16] The owner of a grove who owns the land underneath is entitled to be considered a member of the village community. 1925 Oudh 685 (686) [AIR V 12] + ('07) 10 Oudh Cas 86 (87).

[See also ('04) 7 Oudh Cas 19 (21).]

[See however ('10) 15 Oudh Cas 202 (205) (DB).]

[17] The joint owner of the grove and scattered trees, who claims the right of pre-emption, is not entitled to that right under the Act. ('98) 1 Oudh Cas 284 (289) (DB).

[18] A mere rent free grantee is not a member of the village community for pre-emption purposes within S. 9 of the Oudh Laws Act. 1918 Oudh 280 (282, 283) [AIR V 5] : 21 Oudh Cas 124 (DB).

[19] A village was partitioned in 1883, between eight sets of co-sharers and was divided into eight separate mahals. In 1888 one of co-sharers mortgaged one-anna share in his mahal to G, the father of the second defendant. G obtained a conditional decree for foreclosure and it was followed by an order absolute. The first defendant brought a suit for pre-emption to which the plaintiff was not made a party. The plaintiff instituted a suit for pre-emption on the basis of the foreclosure decree obtained by G and impleaded the second defendant. It was held that the vendor, the plaintiff and the first defendant were all members of the same village community under S. 9, Cl. (3). ('04) 7 Oudh Cas 1 (5).

[20] In the matter of pre-emption ownership of land is the one condition of member-

**Section 9 — Note 11 (contd.)**

ship of the village community for the purpose of S. 9. It does not matter if the land consists of one plot only on which no revenue is assessed. The payment of revenue cannot be the criterion for proof of share in the village or of ownership of land. 1925 Oudh 665 (666) [AIR V 12].

[21] The circumstance that the proprietors hold lands of the village under one tenure is quite sufficient to constitute them a village community. (1900) 3 Oudh Cas 110 (120) (DB).

[22] There is nothing in the third clause of S. 9 which suggests that the vendor also must be a member of the village community to which the claimant belongs. ('07) 10 Oudh Cas 257 (260) (DB).

**12. Proprietor.**—[1] An under-proprietor has no right of pre-emption in respect of a transfer of proprietary property, but a proprietor has such right in the case of a transfer of property held under an under-proprietary tenure under cl. 4. 1941 Oudh 77 (79) [AIR V 28] : 13 Luck 230.

**13. Drawing of lots.**—[1] The last clause of S. 9, Oudh Laws Act, is applicable not only where there are persons equally entitled to buy a property, and it has been sold to a person who has no right at all to acquire it, or to a person who, although he has a right to acquire it, has, as against the persons equally entitled to buy it, a less preferential right, but is also applicable where two or more persons are equally entitled to buy the property and one or more of them has or have acquired it. (1900) 3 Oudh Cas 330 (333) (DB).

[2] Where rival pre-emptors, having the right to pre-emption claim the same property in exercise of such right, the right to acquire the property must, under S. 9, be decided by lot. 1917 Oudh 214 (215) [AIR V 4] : 19 Oudh Cas 185n (DB).

[3] Section 9 of the Oudh Laws Act gives jurisdiction to the Court to draw lots only after the rights of the parties have been gone into and their equality of right has been ascertained. Hence a lottery before arriving at such determination is a nullity binding on neither party. 1943 Oudh 321 (322) [AIR V 30] : 19 Luck 227 (DB).

[4] Where the plaintiff and the vendee are equally entitled to the property, the question as to who is entitled to the property should be decided by drawing lots. ('06) 9 Oudh Cas 271 (272) (DB)\* 1928 Oudh 218 (219) [AIR V 15]\* 1914 Oudh 238 (240) [AIR V 1] : 17 Oudh Cas 242.

**14. Denial of title.**—[1] Person denying the title of the vendor cannot claim to pre-empt the sale. ('94) 21 Cal 496 (502) : 21 Ind App 26 (PC).

[2] Previous denial of vendor's title by pre-emptor cannot deprive him of his right of pre-emption—Pre-emptor attesting adoption deed executed by A's widow in favour of B and depositing in mutation Court that B was in fact adopted by A's widow—Pre-emptor's conduct

held did not amount to denial of vendor D's title as reversioner of A. 1945 Oudh 167 (170) [AIR V 32].

[3] The law of pre-emption, contained in Ss. 9, 10, 11 and 13 of the Oudh Laws Act is not applicable where the person who would be entitled to pre-emption denies the title of the person who proposes to sell and alleges that he is not a co-sharer. ('99) 2 Oudh Cas 9 (11).

**15. Partial pre-emption.**—[1] It is settled law that a person seeking pre-emption must sue to pre-empt all the property included in the conveyance of which his right of pre-emption exists. ('10) 13 Oudh Cas 260 (264) (DB).

[2] A pre-emptor is entitled to pre-empt even a part of the property sold if he pays the entire consideration money paid for the whole of the property sold. 1945 Oudh 167 (168) [AIR V 32]\* ('44) 215 Ind Cas 116 (117) (DB) (Oudh)\* 1943 Oudh 382 (383) [AIR V 30] : 19 Luck 212 (DB)\* 1942 Oudh 113 (114) [AIR V 29] : 17 Luck 412\* 1941 Oudh 18 (19) [AIR V 28].

[But see ('01) 4 Oudh Cas 397 (403, 404).]

[3] In spite of the fact that the right of partial pre-emption on payment of the whole consideration of the sale is recognised, the preference between the competing pre-emptors must be regulated in accordance with the order set down in S. 9. Hence where there are a number of properties included in the sale-deed all of which are pre-emptible a person who has a right to pre-empt all properties, has a superior claim to the person who is entitled to pre-empt only some of them. 1946 Oudh 77 (78) [AIR V 33 C 31].

[4] In the case of a composite sale deed, the transaction can be treated as several distinct sales each of one tenure for a proportionate price and pre-emption of a part of the property may, be allowed and each one of the properties must be considered separately to determine who has the priority in that particular property in accordance with the principles laid down in S. 9. ('49) ILR (1949) All 604 (611) (DB).

**16. Share in law suit.**—[1] A share in a law suit does not give rise to a claim for pre-emption. ('94) 21 Cal 496 (504) : 21 Ind App 26 (PC)\* 1925 Oudh 253 (253) [AIR V 12].

[2] Where property was not in possession of the vendor at the time of the sale and he had only a doubtful right to recover it, such a right, if sold, could not be considered a proprietary or under-proprietary tenure or a share of such tenure within the meaning of S. 9 of the Act, on the sale of which a right of pre-emption could be claimed. ('06) 9 Oudh Cas 86 (90) (DB)\* 1925 Oudh 253 (253) [AIR V 12].

[3] Where an agreement was entered into between a vendor and a vendee by which the latter undertook to meet the costs of litigation, the amount of which was uncertain, in consideration of receiving half the property in the event of success, no money having been paid by the vendee in cash. *Held*, that what was transferred to the vendee was a share in a law



**9A. When a suit for pre-emption lies.**

No suit shall lie for enforcing a right of pre-emption under this Act in respect of a portion only of the property sold or foreclosed:

Provided that, where the plaintiff has a right of pre-emption in respect of only a portion of the property sold or foreclosed, then notwithstanding anything to the contrary contained in any enactment a suit for the pre-emption of that portion only shall lie and the plaintiff shall have to pay the proportionate price or the proportionate amount due in respect of such mortgage for such portion of the property, as the case may be.]

[a] Inserted by U. P. Act XV of 1939, S. 2.

**10. Notice to pre-emptors.**

When any person proposes to sell any property, or when he forecloses a mortgage upon any property, in respect of which any persons have a right of pre-emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of such mortgage, as the case may be:

\*[Provided that, where a person has a right of pre-emption in respect of a portion only of the property proposed to be sold or foreclosed, the notice to such person shall specify the proportionate amount of the price or the proportionate amount due in respect of such mortgage at which the person proposing to sell or foreclose is willing to sell or redeem such portion of the property, as the case may be.]

Such notice shall be given through the Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village or city in which the property is situate.

[a] Inserted by U. P. Act XV of 1939, S. 3.

**Section 9 — Note 16 (contd.)**

suit and not a share in a proprietary tenancy and that therefore it did not give rise to a right of pre-emption. 1925 Oudh 253 (254) [AIR V 12].

[4] A sale deed left the consideration with the vendee to fight out a litigation. The vendor and the vendee were not to have any claims against each other either in respect of any excess or deficit expenditure in regard to the litigation. On a question as to the nature of the transaction, *Held*, that it was a sale fulfilling the requirements of S. 9 of the Oudh Laws Act and S. 54 of the T. P. Act and that the mere fact that there was a cloud on the title of the vendor or that he was out of possession would not change the nature or import of the deed in question. 1945 Oudh 167 (169) [AIR V 32].

**Section 9A — Note 1**

[1] A sale of a mere right to recover a property cannot be the subject of a suit for a pre-emption under Chap. II of Oudh Laws Act. ('11) 11 Ind Cas 279 (280) (Oudh).

**SECTION 10 — SYNOPSIS**

1. "Any person."
2. "Foreclosing a mortgage."
3. Notice required by section.
4. Notice, when should be given.
5. Persons entitled to notice.
6. Omission to give notice.

**7. Estoppel and waiver.****8. Proviso—Retrospective operation.**

1. "Any person."—[1] The words "any person" in the phrase "when any person proposes to sell any property" in S. 10 of the Oudh Laws Act, does not include a Collector when he takes action under S. 28, U. P. Encumbered Estates Act. Consequently, a transfer in execution of a decree effected by a Collector under the latter section is not a sale in respect of which a right of pre-emption can arise under the Oudh Laws Act. 1949 All 774 (778) [AIR V 36 C 289] : I L R (1950) All 100 (DB).

2. "Foreclosing a mortgage."—[1] The expression "foreclosing a mortgage" in S. 10 refers to any action of the mortgagee which compels the mortgagor either to pay the mortgage amount or to suffer his right of redemption to be extinguished. ('09) 12 Oudh Cas 314 (317) (DB).

3. Notice required by section.—[1] The object of notice is to give persons who have a right to pre-empt an option of making an offer within three months which the person proposing to sell can accept. ('11) 14 Oudh Cas 1 (3).

[2] Section 10 provides that when a person proposes to sell any property he shall give notice of the price at which he is willing to sell such property. This obviously means that he must enter correctly in the notice all property which he proposes to sell, so that per-

**Section 10 — Note 3 (contd.)**

sons having the right of pre-emption can decide if they care to take that property at that price. ('04) 7 Oudh Cas 237 (238).

[3] Where a notice is given according to the Act and the price stated in the notice is fixed in good faith there must be an acceptance of the proposal by tender or payment of that price before a claim to pre-empt can succeed. ('06) 9 Oudh Cas 189 (171) (DB).

[4] The burden of proving whether the price stated in the notice was fixed in good faith lies on the plaintiff in the first instance; but only very slight evidence is required to shift the burden to the vendee. ('11) 14 Oudh Cas 1 (3).

[5] Where a mortgagee, while issuing a notice under S. 10, entered therein a sum which was not really due to him, it was unnecessary to consider whether the notice issued by him was issued at the proper time or was served properly. The decree must in such a case provide for payment by the pre-emptor of what was due on the mortgage at the date of the order absolute, or, if that exceeds the market value of the property, upon the payment of the market value. ('07) 10 Oudh Cas 179 (187) (DB).

[6] A mortgagee issuing a notice under S. 10 is not entitled to claim interest up to the date of notice, but only up to the date on which the decree for foreclosure was made absolute. ('07) 10 Oudh Cas 179 (187) (DB).

[7] The amount due in respect of the mortgage on foreclosure is the amount found by the Court to be due on the mortgage, in a suit between mortgagor and mortgagee on which the decree for foreclosure is passed. That is the only amount which a mortgagee can in good faith, enter in the notice prescribed by S. 10. ('99) 2 Oudh Cas 103 (108).

[8] Section 10 requires the notice to be in writing in every case. Oral evidence of notice is inadmissible. ('98) 1 Oudh Cas 254 (261).

[See also 1947 Oudh 81 (82) [AIR V 34 C 25] : 21 Luck 598. (The rigour of the law relating to notice has gradually been relaxed.)]

[9] Where a vendor has given notice under S. 10 the purchaser is not affected though the notice was issued more than one year before sale. ('11) 14 Oudh Cas 332 (335).

[10] A notice issued under S. 10 is not defective merely because by some methods of calculation it appears that the area stated in the notice is not strictly accurate. ('11) 14 Oudh Cas 332 (335).

[11] A pre-emptor who shows that the person from whom the title to the property, which carries with it the right of pre-emption had devolved on him was not given the notice required by S. 10, then such person must be held to be a legitimate pre-emptor and is entitled to acquire the subject-matter of the same. 1930 Oudh 274 (276) [AIR V 17] : 5 Luck 12 (FB).

[12] A vendee, who at the date of the sale was not a co-sharer, cannot defeat the suit brought by a pre-emptor by acquiring the possession of a co-sharer during the pendency of the suit, provided he has not acquired such

a position from a person who was entitled to a notice under S. 10 and has not received it and whose right of pre-emption has not been extinguished by any rule of law on the date of the acquisition by the vendees. 1930 Oudh 274 (276) [AIR V 17] : 5 Luck 12 (FB).

[13] A right of pre-emption is enforceable in the event of a person entering into a contract for the sale of property, in respect of which other persons have a right of pre-emption, and failing to give such other persons the notice required by S. 10, and the enforcement of such right does not depend upon the existence of a sale of the property in the mode provided by S. 54, T. P. Act. ('99) 2 Oudh Cas 7 (8).

[14] In S. 10 there is no mention of a constructive notice. Every co-sharer is entitled separately to a notice or the procedure should be adopted of striking it up on the chaupal or other public places of the village in which the property is situated. 1925 Oudh 352 (354) [AIR V 12] : 28 Oudh Cas 139 (DB).

**4. Notice, when should be given. —**

[1] The notice referred to in S. 10 of the Act should be given at the time of filing the suit of foreclosure or with such reasonable promptitude thereafter that the three months' grace allowed under S. 12 may expire before the decree absolute is passed. The issue of notice after the date of passing the decree absolute is not valid under S. 10. ('09) 12 Oudh Cas 314 (317) (DB).

[2] To comply with S. 10 notice need not be issued before any contract to sell has been entered into. It is sufficient if it is issued after the contract has been entered into but before actual sale has been completed. 1919 Oudh 324 (325) [AIR V 6] (DB).

**5. Persons entitled to notice. —** [1] It is the duty of the mortgagees when they foreclose the mortgage to give notice to the plaintiff pre-emptor of the amount due in respect of such mortgage—That duty is cast on them by S. 10. ('99) 2 Oudh Cas 103 (108).

[2] When a foreclosure decree is to be passed against the members of a Hindu joint family and the joint family owns property other than that foreclosed, notice need not be served individually on all the members of the joint family. 1925 Oudh 352 (356) [AIR V 12] : 28 Oudh Cas 139 (DB).

[3] The meaning of the section is not that after the vendor has agreed to sell the property to some person he should issue a notice to those persons who have a right of pre-emption as against the vendee, but that a person who intends to sell property, which is subject to the right of pre-emption shall issue a notice to all persons who have under the law of pre-emption a right to buy. 1928 Oudh 218 (219) [AIR V 15].

[4] As an auction-purchaser has a right to claim confirmation of auction-sale that the property vested in him from the date of the auction, he is entitled to a notice under S. 10 in respect of any sale which takes place before the date of confirmation but after the date of auction and if such notice is not given to him he is entitled to pre-empt the sale. 1926 Oudh 189 (190) [AIR V 13] : 1 Luck 80 (DB).

**11. Loss of right of pre-emption.**

Any person having a right of pre-emption in respect of any property proposed to be sold shall lose such right, unless within three months from the date of

**Section 10 — Note 5 (contd.)**

[5] By S. 10 notice is to be given to the "person concerned", that is, the person who obtained a right of pre-emption by reason of the sale. Whether the plaintiffs were entitled to notice depends on whether they have a right of pre-emption or not. 1925 Oudh 352 (359) [AIR V 12] : 28 Oudh Cas 139.

[6] Only such persons are entitled to acquire or retain the property, which is the subject-matter for a claim for pre-emption, who are entitled to the proper notice prescribed by S. 10 on the date of the proposal to sell and must have received such a notice. Such persons, however, include their representatives-in-interest. 1930 Oudh 274 (276) [AIR V 17] : 5 Luck 12 (FB).

**6. Omission to give notice.** — [1] Where decree for foreclosure in favour of a mortgagee is made final and the mortgage is foreclosed within S. 10 no notice being given by the decree-holder under S. 10 to any of the pre-emptors and a pre-emptor institutes a suit for the declaration of his right of pre-emption and obtains a decree, the interests of the decree-holder under the foreclosure decree are transferred by operation of law to the pre-emptor who by his action places himself in the exact position of the foreclosure decree-holder and is therefore entitled to execute that decree under O. 21, R. 16. Civil P. C. The action of the foreclosure decree-holder in withdrawing his rights as decree-holder and in certifying to the Court that his decree is satisfied by the execution of a fresh mortgage by the judgment-debtor can have no effect as against the pre-emptor. 1927 Oudh 358(360) [AIR V 14] : 2 Luck 710 (DB).

[2] If a vendee fails to see that the vendor complies with S. 10 of the Act and files a redemption suit against the mortgagee who files a simultaneous pre-emption suit, the vendee cannot recover from the pre-emptor-mortgagee the costs of the redemption suit. (1919) Oudh 62 (67) [AIR V 8] : 22 Oudh Cas 353 (DB).

[3] It is a fundamental principle of law that a person cannot take advantage of his own wrong-doing. A purchaser who purchases property, without ascertaining that it has been offered first to a person having a preferential right of purchase is assisting the vendor in evading his obligation to give notice under S. 10. 1919 Oudh 62 (68) [AIR V 8] : 22 Oudh Cas 353 (DB).

**7. Estoppel and waiver.** — [1] Where estoppel by acquiescence as distinct from estoppel by prescribed notice is pleaded it is necessary that there must be an offer specifying the price at which it was proposed to sell the property and refusal to purchase it. And the mere publication of a notice of a proposed auction sale in the village of a person is not sufficient to estop such person from claiming right of pre-emption. 1933 Oudh 134 (138, 139) [AIR V 20] : 8 Luck 322 (FB).

[2] Where the plaintiff never put himself

forward as an heir of the deceased in the first instance but the decree-holder himself proceeded to execute against him a decree for specific performance of a contract to execute a sale deed obtained against the deceased, alleging him among others to be the legal representative of the deceased and the sale deed was finally drawn up by the Court on behalf of the widow of the deceased as his sole legal representative to the exclusion of the plaintiff and others, the plaintiff cannot be said to be a party to the deed so as to estop him from claiming pre-emption of the property conveyed by the sale-deed. 1941 Oudh 611 (612, 614) [AIR V 28] : 17 Luck 164 (DB).

[3] Pre-emptor, though aware of sale, not objecting—Vendee spending money in getting sale deed—Pre-emptor present when sale deed was executed and registered—Refusal of pre-emptor to purchase and his consent to sale, held could be inferred. 1947 Oudh 81 (85) [AIR V 34 C 25] : 21 Luck 598.

[4] Mere omission or refusal to accept an oral offer of sale does not of itself, and without some positive act of the pre-emptor by way of discharging the vendor, constitute a waiver of the right of pre-emption or dispense with performance of the obligation to serve a written notice. (198) 1 Oudh Cas 254, 262.

[5] Village devolved by, on several grantees living in England—Owners desiring to dispose of the property—Property divided into blocks and put in market for some time—Blocks delineated in separate plans—Separate khasras and Jamabandis prepared—One block purchased by P—P having knowledge that other blocks were also in the market and knowing their prices—P informing that he did not wish to purchase other blocks—Oral agreement to sell to third person entered prior to agreement with P—P held not entitled to pre-empt. 1929 P. C. 259 (280) [AIR V 18] : 56 Ind App 356 : 4 Luck 421.

**8. Proviso — Retrospective operation.** —

[1] The Amending Act 15 of 1939 lays down that the law as it stood created hardship inasmuch as it forbids pre-emption of a part of the property upon payment of a proportionate part of the price and therefore it was necessary to remove the defect in the law and amend it so as to permit partial permission. 1943 Oudh 382 (384) [AIR V 30] : 19 Luck 212 (DB).

[2] Act XV of 1939—which amended S. 10 of the Oudh Laws Act does not expressly lay down that it shall be retrospective nor can an intention that it should be retrospective in its operation be inferred by implication from its provisions. 1943 Oudh 382 (383) [AIR V 30] : 19 Luck 212 (DB) + 1943 Oudh 129 (130) [AIR V 30] : 18 Luck 397 (DB).

**Section 11 — Note 1**

[1] Section 11 lays down the procedure where the sale-deed has not been executed yet. 1923 Oudh 91 (92) [AIR V 10].

such notice he or his agent pays or tenders the price \*[specified in the notice given under the preceding section] to the person so proposing to sell.

[a] *Substituted* for "aforesaid" by U. P. Act XV of 1939, S. 4.

## 12. Right of pre-emptor on foreclosure.

When the right of pre-emption arises in respect of the foreclosure of a mortgage \*[or a portion of the mortgage], any person entitled to such right may, at any time within three months after the giving of the notice required by section 10, pay or tender to the mortgagee or his successor in title the amount specified in such notice, and shall thereupon acquire a right to purchase the property, \*[or a portion thereof, as the case may be].

On completion of the purchase the person exercising the right of pre-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the principal sum secured by the mortgage \*[or the proportionate amount of such principal sum in respect of the portion of the property in which he possesses the right of pre-emption, as the case may be], at the rate specified by the instrument of mortgage, for any time which has elapsed since the date of the notice, and any additional costs which may have been properly incurred by the mortgagee or his successor in title.

[a] *Inserted* by U. P. Act XV of 1939, S. 5.

## 13. Suit to enforce right of pre-emption.

Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely):—

- (a) that no due notice was given as required by section 10;
- (b) that tender was made under section 11 or section 12 and refused;
- (c) in the case of a sale, that the price stated in the notice was not fixed in good faith;

### Section 12 — Note 1

[1] Under the provisions of S. 12 the mortgagee is entitled to be paid by the pre-emptor the costs properly incurred by him in obtaining a decree for foreclosure of the mortgage. (1900) 3 Oudh Cas 184 (191) (DB).

### SECTION 13 — SYNOPSIS

1. Persons entitled to bring suit.
2. Suit to enforce right of pre-emption.
3. "In good faith."
4. Market value of property.
5. Word "and" in cl. (d) and last para.

#### 1. Persons entitled to bring suit. —

[1] The words "entitled to a right of pre-emption" as used in S. 13 must be construed as meaning entitled at the date of suit. There is nothing in the language of the section to support the interpretation that a person entitled to a right of pre-emption at the date of sale may bring a suit to enforce such rights even after he has ceased to be so entitled. The plaintiff in a suit for pre-emption must show that he possessed the necessary qualifications not only at the date of sale but also at the date of suit. 1931 Oudh 281 (284) [AIR V 18] : 7 Luck 51 (FB).

[2] The knowledge of the karta of a joint Hindu family in respect of the sale transaction cannot be deemed to be the knowledge of the other members of the family so as to estop them from bringing a suit for pre-

emption. 1949 Oudh 65 (65) [AIR V 36 C 15] : 23 Luck 139 + 1929 Oudh 158 (160) [AIR V 16] : 4 Luck 524 (DB).

[3] If the notice required by S. 10 be not served on the holder, his heir is entitled to bring a suit under the provisions of S. 13. 1916 Oudh 247 (249) [AIR V 3] : 18 Oudh Cas 256 (DB).

#### 2. Suit to enforce right of pre-emption.

—[1] The true interpretation of S. 13 seems to be that in all cases a violation of the right is an essential condition to the bringing of a suit for enforcement of it. There can be no cause of action without an invasion of the plaintiff's right. (10) 13 Oudh Cas 219 (228) (DB).

[2] The claims of the pre-emptor must be determined with reference to the position of his co-sharership not only at the date of sale but also at the date of suit and the position claimed by the vendee must be determined only with reference to his position as a co-sharer at the date of sale. 1931 Oudh 281 (283, 284) [AIR V 18] : 7 Luck 51 (FB).

[3] The plaintiff in a suit for pre-emption has to show that his right to pre-empt still subsists at the time he brings the suit for. As is explained in the preceding sections, such a right may be lost by failure to tender within three months from the date of the notice. (10) 13 Oudh Cas 219 (228) (DB).

[4] R owned property in respect of which J S had a right of pre-emption R entered into negotiations with M who made a tenta-

(d) in the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged, \* [or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be.]

If, in the case of a sale, the Court finds that the price was not fixed in good faith, the Court shall fix such price as appears to it to be the fair market-value of the property sold, \* [or the portion of the property sold in respect of which he possesses the right of pre-emption, as the case may be].

If, in the case of a mortgage, the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, and that it was not claimed in good faith and that it exceeds the fair market-value of the property mortgaged \* [or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be], the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market-value.

[a] *Inserted* by U. P. Act XV of 1939, S. 6.

### Section 13 — Note 2 (contd.)

tive offer of Rs. 1,200 for it. *R* thereupon gave the notice required by S. 10 to *J S* that *R* was ready to sell the property for Rs. 1,200. *J S* made a tender of Rs. 1,200 by paying the said sum into Court. The tender was made within three months from the date of notice, but *R* and *M* did not continue the transaction. *M* resiled from the bargain and the property was not sold. *J S* came into Court claiming that under the provisions of S. 13 (b) he being the person entitled to a right of pre-emption could bring a suit to enforce such a right on the ground that he had made a tender under S. 11 and that that tender had been refused. *Held* that there had been no transfer by sale and the property had remained in possession of *R*. *J S* had therefore, no right to the property. 1927 Oudh 438 (439) [AIR V 14] : 2 Luck 726 (DB).

[5] The Court should only look as to who is the transferee according to proper construction of the deed and the suit for pre-emption would lie against such transferee. 1927 Oudh 509 (509, 510) [AIR V 14] (DB).

3. "In good faith." — [1] The words "in good faith" under S. 13 mean 'honestly' and the word 'honestly' applied to the fixing of the price of the property sold which is subject to pre-emption must import that the price fixed was meant to be actually paid and was not to be false or fictitious one in order to make out the value to be higher than the reality and to defeat pre-emption. 1927 Oudh 361 (362, 363) [AIR V 14] : 2 Luck 694 (DB).

[2] To determine whether the price has been fixed in good faith the Court can examine whether there is any very great difference between that price and the market value of the property. 1920 Oudh 76 (79) [AIR V 7] : 22 Oudh Cas 335 (DB).

[3] A Court has a perfect right to decide on the facts whether property has been genuinely sold for a fancy price which has been paid to and enjoyed by the vendor or whether the sale price has been fixed fictitiously in order to defeat claims for pre-emption and has not been actually enjoyed by the vendor. 1917

Oudh 172 (2) (173) [AIR V 4] : 19 Oudh Cas 236.

[4] In the absence of actual evidence to show that the price was fixed in bad faith, no legal presumption to that effect can arise simply because it is found that the price paid by the vendee, as well as even that offered by the pre-emptor are, in view of the recorded income of the property, such as no reasonable man actuated by business principles would offer. 1927 Oudh 361 (363) [AIR V 14] : 2 Luck 694 (DB) + 1917 Oudh 172 (2) (173) [AIR V 4] : 19 Oudh Cas 236.

[5] Where a pre-emption suit is decreed and it is found that deliberately a fictitious price was entered in the sale deed, the vendee's price are not entitled to the value of stamps and cost of registration of the fictitious deed. 1940 Oudh 120 (128) [AIR V 27] : 16 Luck 1 (FB).

[6] In the absence of any special reason for paying fancy price for a property, the fact that such a fancy price has been entered in the sale deed is in itself evidence of the price being fictitious. 1919 Oudh 55 (57) [AIR V 6].

[7] The mere fact that an excessive or a fancy price is paid for the property or that the vendee fails to make proper inquiries about the property does not establish that the price was not fixed in good faith. 1927 Oudh 361 (362) [AIR V 14] : 2 Luck 694 (DB).

[8] If the price entered in the deed greatly exceeds the market value, that fact would be relevant to the issue of good faith but it would be open to the vendee to show special circumstances which induced him to pay a fancy price for the property. 1920 Oudh 76 (79) [AIR V 7] : 22 Oudh Cas 335 (DB).

[9] Chapter 2 of the Oudh Laws Act does not allow any discretion to a Court in a pre-emption suit to go into the question of the good faith of the plaintiff. 1919 Oudh 1 (4) [AIR V 6] : 22 Oudh Cas 323 (DB).

4. Market value of property. — [1] A court in a pre-emption suit can decide on facts whether the property was sold for a fancy or fictitious price and can further determine its market value if it holds that the sale price was fixed in bad faith. 1927 Oudh 361

**14. Decree to fix time for payment.**

If the Court find for the plaintiff, the decree shall specify a day on or before which the purchase-money or the amount to be paid to the mortgagee shall be paid.

**15. Effect of non-payment of purchase-money.**

If such purchase-money or amount is not paid into Court before it rises on that day, the decree shall become void, and the plaintiff shall, so far only as relates to such sale or mortgage, lose his right of pre-emption over the property to which the decree relates.

**Section 13 — Note 4 (contd.)**

(363) [AIR V 14] : 2 Luck 694 (DB) \* 1917 Oudh 172 (2) (173) [AIR V 4] : 19 Oudh Cas 236.

[2] Market value of a property is a question of fact unless an error of law in determining the market value is pointed out. 1929 Oudh 244 (246) [AIR V 16] : 4 Luck 643 (DB).

[3] Where the court arrives at a finding that the price fixed in the deed has not been fixed in good faith it is its duty to determine what is the fair market value of the property sold. No doubt in many cases the price actually paid is a very good indication for determining the fair market value of the property sold, and that it is an element which the Courts must consider in determining the market value but the court must not treat the money actually paid as conclusive evidence of the market value. The market value, however, so determined should not exceed the sale price mentioned in the deed. 1929 Oudh 244 (245) [AIR V 16] : 4 Luck 643 (DB) \* 1940 Oudh 120 (128) [AIR V 27] : 16 Luck 1 (FB) \* 1936 Oudh 100 (101, 102) [AIR V 23] (DB).

[4] Even if no notice has been given of the intended sale, the Court should fix the fair market-value, if the price fixed in the sale deed is found to be fictitious or not fixed in good faith. The price to be paid by the pre-emptor is the fair market-value and not the sum actually paid by the purchaser. 1936 Oudh 100 (101) [AIR V 23] (DB).

[5] When the plaintiff in a suit under Ch. 2 of the Act alleges that the price stated in the sale deed is fictitious and the allegation is denied, the court under S. 13 of the Act has not to determine what the price paid for the property actually is, but whether the price stated in the deed is fictitious as alleged and if so what the fair market value of the property is. 1926 Oudh 68 (1) (68) [AIR V 13] \* ('01) 4 Oudh Cas 158 (161) (DB).

[6] If the plaintiff succeeds in showing that the price stated in the sale deed is fictitious, he is not entitled to acquire the property for the price actually paid, but must pay for it a price equivalent to the fair market value. ('01) 4 Oudh Cas 158 (161) (DB).

[7] Under S. 13 of the Oudh Laws Act if any single item forming part of the price mentioned in the sale-deed is found to be fictitious the Court must fix such price as appears to it to be the fair market value of the property sold. 1919 Oudh 55 (57) [AIR V 6].

[8] The market value of the property in a pre-emption suit may be ascertained and trea-

ted as evidence in dealing with the question of bad faith. ('98) 1 Oudh Cas 227 (229).

[9] Where a person has purchased a property for a price much above the market value the pre-emptor must pay the price so paid before he can be allowed to pre-empt. The fact that an excessive or a fabulous price has been paid will not enable the pre-emptor to acquire the property at the market value even though such price may have been paid for the purpose of injuring or annoying the pre-emptor. ('11) 9 Ind Cas 58 (59) (Oudh).

**5. Word "and" in cl. (d) and last para.**

—[1] The word 'and' in cl. (d) and the last paragraph of S. 13 should be understood in its natural grammatical sense to indicate a conjunctive sense and not a disjunctive sense and cannot be read as 'or'. To read 'and' as 'or' would be wholly inconsistent not only with the provisions of the Act relating to sales but also with the provisions of Ss. 10 and 12 of the Act relating to foreclosure. In this view it must be held that it is necessary to prove the existence of all the three conditions mentioned therein before the Court can reduce the amount payable to mortgagee. 1951 All 119 (121) [AIR V 38 C 14] : 1 L R (1952) 1 All 194 (FB). (10 Oudh Cas 179 and AIR 1943 Oudh 282, *Overruled*.)

**Section 14 — Note 1**

[1] In suits between rival pre-emptors the claimant with inferior right should be granted a decree conditional on the claimant with superior right failing to avail himself of his decree. ('01) 4 Oudh Cas 397 (406).

[2] The procedure controlling the deposit of purchase money in a suit for pre-emption is stated in Ss. 14 and 15 of the Oudh Laws Act, 1876, and not in the rules of the Code of Civil Procedure. The expression "purchase money" means the whole of the purchase money as specified in the decree. 1927 Oudh 69 (69) [AIR V 14] : 1 Luck 158 (DB).

**Section 15 — Note 1**

[1] Section 15 in most unequivocal terms declares what the consequences shall be if the purchase money is not paid into Court as required by that section. 1920 Oudh 25 (28) [AIR V 7] : 23 Oudh Cas 254.

[2] Under S. 15 the pre-emptor is bound to pay the purchase-money as specified in the decree into Court, and this obligation is independent of the question whether the decree did or did not expressly prescribe payment into Court. ('11) 14 Oudh Cas 85 (88)

## CHAPTER III

### PROCEDURE OF THE COURTS

#### 16. Rule of limitation.

The Judicial Commissioner's Circular No. 101 of July, 1860, shall be held to have been a notification within the meaning of section 24 of Act 14 of 1859,\* and such Act shall be deemed to have been in force in Oudh from the fourth day of July, 1862; and all orders and decrees passed under the rules contained in the said Circular, or under the said Act, shall be deemed to have been passed under a law in force for the time being.

#### Section 15 — Note 1 (*contd.*)

(DB) \* (05) 8 Oudh Cas 57 (59) (DB). (Payment by pre-emptor out of Court — No payment in pre-emption suits, except a payment directly into Court, can be held valid under this section.)

[3] A decree, declaring that in default of payment of the amount specified therein the suit shall stand dismissed, becomes a decree for dismissal on the happening of such default. Such an order of dismissal is appealable as a decree, to the proper Court and no revision can be entertained by the second appellate Court. 1914 Oudh 221 (222) [AIR V 1].

[4] Section 15 is mandatory and the attempted payment of purchase money at 6.30 P.M. at the house of subordinate Judge is not a payment as required by S. 15. 1920 Oudh 25 (28) [AIR V 7]; 23 Oudh Cas 254.

[5] A Court has no power under S. 148, Civil P. C. to enlarge the time fixed in a decree for pre-emption for depositing the purchase money. 1920 Oudh 25 (29) [AIR V 7]; 23 Oudh Cas 254.

[6] Although it is true that the Court has no jurisdiction to extend the time for payment of purchase money of a pre-emption decree and that such money should be paid in Court to render the payment valid, yet where the vendee by inducing the plaintiffs to believe that he would part with the property on receipt of money even after due date, has obtained money from the plaintiffs, he is estopped from contesting the plaintiff's right to execute the decree. 1924 Oudh 153 (154) [AIR V 11].

[7] The validity or otherwise of the tender of the purchase money has to be determined with reference to S. 15 and not O. 20, R. 14, Civil P. C. 1920 Oudh 25 (27) [AIR V 7]; 23 Oudh Cas 254.

[8] The mere submission of a tender for the deposit of a decree amount as per terms of a pre-emption decree on a particular date cannot be regarded as payment on that date so as to constitute compliance with the terms of S. 15 which must be construed strictly. 1948 Oudh 47 (49) [AIR V 35 C 22]; 22 Luck 497 (DB). (Amount paid to Nazir shortly after 3 P.M. on last day — Refusal is not justified.)

[9] The right of pre-emption is not lost when the pre-emptor has not deposited the amount fixed by the trial Court but has preferred an appeal contesting the amount either before or after the expiry of the time fixed by the trial Court and the appeal does not become infructuous by reason of his failing to deposit the money. 1940 Oudh 120 (127) [AIR

V 27]; 16 Luck 1 (FB) (AIR 1924 Oudh 102, *Overruled*); \* 1942 Oudh 399 (2) (401) [AIR V 29]; 18 Luck 164 (DB).

[10] The word "decree" as used in S. 15 must be read as meaning the final decree passed in the case. It would be contrary to sound principle to compel the plaintiff to pay the amount decreed by the trial Court and to subject him to the penalty of losing his right of pre-emption if he fails to do so when he has a right to question the correctness of the amount made payable by the trial Court by means of an appeal against it. 1932 Oudh 63 (66) [AIR V 19]; 7 Luck 350 (DB).

[11] In accordance with a decree in a pre-emption suit, the money was tendered in court within the time fixed by the decree, the form of application prescribed therefor by the Oudh Civil Court Rules framed under Ss. 122 and 127 of the C. P. Code was duly filled up and received by the Munsif. The party entitled to the money under the decree applied to the court for permission to withdraw the amount; the court, after being satisfied, that the property had been handed over to the plaintiff, directed payment out, without resorting to the cumbersome process, of the money being first placed into the treasury and then withdrawn therefrom under order of court by the decree-holder. The money under such circumstances was held to have been validly paid into court within the meaning of S. 15 of the Act. 1931 Oudh 22 (25) [AIR V 18]; 5 Luck 116 (DB).

[12] The respondent obtained a pre-emption decree subject to payment of Rs. 60 which he duly deposited but subsequently attached and withdrew on account of the amount due to him for costs a sum of Rs. 22/-. The appellate Court increased the amount payable for the property to Rs. 108-6-0. He accordingly paid the balance of Rs. 26-6-0 and obtained possession of the property. Under the decree both parties were to pay their own costs in the event of the plaintiff complying with the decree. On the matter being brought to notice the plaintiff paid in the amount of Rs. 22/- which he had withdrawn but not within the one month allowed by the decree — *Held* that there was a sufficient compliance with the decree, 34 All 596, *Foll.* It made no difference that in Oudh the right of pre-emption is a statutory right and payment is made in accordance with S. 15 of the Act. 1923 Oudh 271 (271, 272) [AIR V 10].



Nothing in this section affects the provisions of sections 102, 104, 105, 106, 107 and 108 of the Oudh Rent Act (XIX of 1868)<sup>b</sup> with regard to the limitation of suits under that Act.

[a] See now the Limitation Act, 1908 (IX of 1908). [b] Act XIX of 1868 was repealed by the Oudh Rent Act, 1886 (XXII of 1886), S. 2, Act XXII of 1886 was repealed by the U. P. Tenancy Act, 1939 (U. P. XVII of 1939).

**17.** Act XXXII of 1871, S. 28, to cease in any district from date of notification that it is no longer under settlement [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*]

**18.** Recognized agents. [*Repealed by the Amending Act, 1891 (XII of 1891).*]

**19.** Rules for taking evidence.

\*Section 172 of Act No. 8 of 1859 is hereby repealed, so far as the province of Oudh is concerned, and the following section is substituted therefor :—

“On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

“A note of the essential points of the evidence of each witness is to be taken at the time, and in the course of oral examinations, by the officer who tries the case, in his own language, or in English if he is sufficiently acquainted with that language and such note shall be filed, and shall form part of the record of the case.

“If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down to be interpreted to him in the language in which it was given.

“It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing, or any party or his pleader requires it.

“If any question put to a witness be objected to by either of the parties or their pleaders, and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the depositions, together with the decision of the Court upon the objection.

“The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination.

“[“The note as above required may be written and signed by the Judge with his own hand or typed to his dictation in open Court and signed by him with his own hand, and such note shall form part of the record.”]

[a] See now Order XVIII Rules 4 to 14, both inclusive, of the Code of Civil Procedure, 1908 (V of 1908). [b] Substituted for the former paragraph by U. P. Act XXIV of 1954, S. 2 and Sch.

\*[**20.** Execution-sale of ancestral and acquired property in land.

So much of section 60 of the Code of Civil Procedure, 1908, as renders land liable to sale in execution of a decree shall be subject to the following restriction :— No ancestral land shall be sold in satisfaction of a decree without the permission of the <sup>A</sup>[State Government].

#### Section 19 — Note 1

[1] Section 19 applies to a prosecution regarding a proceeding before the Chief Court and under that section it is necessary to interpret the evidence recorded in English to a witness who gives his evidence in another language such as Urdu and does not understand English, if the witness requests that his

deposition be interpreted to him. 1931 Oudh 385 (385) [AIR V 18] : 32 Cri L Jour 851.

#### Section 20 — Note 1

[1] A Court has no jurisdiction to sell land in contravention of the terms of S. 20 of the Oudh Laws Act and if it does so, the pur-



**Explanation.**—In this section the words “ancestral land” mean—

- (a) land forming a mahal or share in or portion of a mahal, which has been owned continuously from the conclusion of the first regular settlement by the proprietor, which term shall include an under-proprietor as defined in section 4, clause (15) of the United Provinces Land-revenue Act, 1901, or by the person or persons from whom such proprietor has directly or indirectly inherited such land ;
- (b) land forming an estate or part of an estate as defined in the Oudh Estates Act, 1869 ;
- (c) land conferred by the British Government as a reward for services rendered to the State on the owner or on a person from whom such owner has directly or indirectly inherited such land ; or
- (d) the interest of the holder of a grant of land revenue conferred by the British or any former Government on him or on a person from whom he has directly or indirectly inherited such interest.]

[a] Substituted for the original section by U. P. Act III of 1912, S. 2.

**21. Appointment of manager of land attached.** [*Repealed by the Oudh Civil Courts Act, 1879 (XIII of 1879).*]

**22. Service of process within jurisdiction of Lucknow Civil Court.**†

Notwithstanding anything contained in the said Code, any Civil Court sitting within the local limits of the jurisdiction of the Lucknow Civil Court but exercising jurisdiction beyond such limits, may cause summonses, warrants, notices and other processes to be served within the local limits of the jurisdiction of the Lucknow Civil Court without causing the same processes to be served through such Court.

**23. Section substituted for Act XIX of 1868, S. 109.** [*Repealed by the Oudh Rent Act, 1886 (XXII of 1886).*]

**24. Section substituted for Act XIX of 1868, S. 118.** [*Repealed by the Oudh Rent Act, 1886 (XXII of 1886).*]

**Section 20 — Note 1 (contd.)**

chaser acquires no title. (‘05) 8 Oudh Cas 409 (412) (DB).

[2] The Commissioner’s (now State Government’s) sanction under S. 20 is not a mere formality, but an essential preliminary to a legal sale being held, and parties to a decree cannot dispense with it. 1918 Oudh 379 (386) [AIR V 5] (DB).

[3] Section 20 applies to sales in execution of mortgage decrees. 1918 Oudh 379 (386) [AIR V 5] (DB) \* (1900) 3 Oudh Cas 1 (7) (DB).

[4] Land which comes into the possession of a person as a result of litigation, on the ground of his adverse possession against the Taluqdar to whom it originally belonged, is not the ancestral property of that person. 1925 Oudh 671 (1) (671) [AIR V 12] (DB).

[5] The term “property” in S. 20 of the Act means “land” itself and not any interest that may be acquired in it and hence the mortgagee rights can be sold without previous sanction. (‘12) 14 Ind Cas 351 (352) (Oudh).

[6] Where the plaintiff brought to sale the lands granted to the defendant by Government free of payment of land revenue and on objection by the Government that it was in-

alienable, made the Government and a subsequent transferor also a party, to a suit to declare his rights to the property—*Held*, that although the Local Government had unfettered discretion to refuse sale in such a case, yet the declaration made by it in the same order as to the terms of the grant must be treated to have been made in its capacity as grantor and could be challenged and that the Civil Court had jurisdiction to hear the suit. The question of discretion possessed by the Court in the matter of granting declarations could not be considered until the case had been heard on the merits. 1914 Oudh 423 (425) [AIR V 1] : 17 Oudh Cas 389 (DB).

[7] Where the Commissioner’s order on an application for permission to sell ancestral land under S. 20 was, “considering the character of the buildings I think permission might be refused at present. If the judgment-debtor takes no steps to arrange, they might be sold afterwards.” — *Held*, that the order was not intended to dispense with the necessity for any further application for sanction but meant that the refusal was not necessarily permanent and that the sanction might be granted in future if the judgment-debtor took no steps to satisfy the decree. 1918 Oudh 379 (386, 387) [AIR V 5] (DB).

**25.** Right of occupancy in judgment-debtor's sir-land. [*Repealed by the Oudh Rent Act, 1886 Amendment Act, 1901 (U. P. IV of 1901).*]

**26.** Revenue-agents authorized to appear, etc., in rent-suits.

Notwithstanding anything contained in Act No. XX of 1865<sup>a</sup>, all persons duly admitted and enrolled as Revenue agents under that Act in <sup>b</sup>[\* \* \*] Oudh may appear, plead and act in suits under the Oudh Rent Act<sup>c</sup> in the Courts of officers exercising the powers of Assistant Collectors, Deputy Collectors, Collectors and Commissioners under the same Act.

[a] See now the Legal Practitioners Act, 1879 (XVIII of 1879). [b] The words "the territories for the time being under the administration of the Chief Commissioner of" were omitted by A. O., 1937 [1-4-1937]. [c] See now the U. P. Tenancy Act, 1939 (U. P. XVII of 1939).

**27.** Power to make rules for custody and sale of attached property.

With the sanction of the <sup>A</sup>[State Government], the <sup>a</sup>[High Court] may from time to time make rules consistent with this Act and with the Code of Civil Procedure<sup>b</sup>—

- (a) for the custody and sale of movable property attached in execution of decrees ;
- (b) for the levy of a fee or commission on the sale of attached property and the disposal of the funds accruing from such fees ;
- (c) as to the appointment and remuneration of persons <sup>c</sup>[(not being persons in the service of the Government)] by whom property is to be attached, kept in custody and sold ;
- (d) as to the appointment and remuneration of persons <sup>c</sup>[(not being persons in the service of the Government)] by whom local investigations under section 180, and investigations and adjustments of accounts under section 181, of the Code of Civil Procedure<sup>d</sup> are to be made.

[a] Substituted for "Chief Court", by A. L. O., 1950 [26-1-1950]. [b] See now the Code of Civil Procedure, 1908 (V of 1908). [c] Inserted by A. O., 1937 [1-4-1937]. [d] See now the Code of Civil Procedure, 1908 (V of 1908), Schedule I, Order XXVI, Rules 9 to 12.

**28.** Power to revise decrees and orders of subordinate Courts. [*Repealed by the Oudh Civil Courts Act, 1879 (XIII of 1879).*]

## CHAPTER IV

### VILLAGE AND ROAD-POLICE

**29.** Right to nominate village-policemen.

The nomination to the post of village-policeman shall be made by the zamindar of the village, or, where there are more zamindars than one, by the lambardar as their representative ; and, where there are more lambardars than one, the opinion of the majority (unless there is some special provision to the contrary in the village administration-paper) shall prevail.

**30.** Obligation to nominate.

Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district.

**31.** Discretion to appoint or reject nominee.

The person so nominated shall, after due enquiry into his age, character and ability, be appointed or rejected by the <sup>A</sup>[State Government].

**32. Power to Government to appoint.**

In default of such nomination within the said fifteen days, the <sup>A</sup>[State Government] shall appoint such person as <sup>A</sup>[it] thinks fit to the vacancy.

**Procedure in case of rejection of nominee.**

If the nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post ; and in default of such nomination, or if such nomination has been made but the nominee is again rejected, the <sup>A</sup>[State Government] shall appoint such person as it thinks fit to the vacancy.

[a] Substituted for "he" by A. O., 1937 [1-4-1937].

**33. Appointment of road-police.**

Subject to the rules to be framed under section 39 and for the time being in force, the <sup>A</sup>[State Government] may from time to time appoint persons to be <sup>A</sup>[road-police].

[a] Substituted for "the road-police of his district", by A. O., 1937 [1-4-1937].

**34. Duties of village and road policemen.**

Every village-policeman and every road-policeman shall perform the following duties :—

- (a) he shall give immediate information to the officer in charge of the police-station appointed for his village or beat—
  - (1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar, or within his beat ;
  - (2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespass ; and
  - (3) of all attempts and preparations to commit, and abetments of, any of the said offences ;
- (b) he shall keep the police informed of all disputes which are likely to lead to any riot or serious affray ;
- (c) he shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in paragraph (a), clause (2), of this section ;
- (d) he shall observe and from time to time report to the officer in charge of the police-station within the jurisdiction of which his village or beat may be situate, the movements of all bad characters in or on such village or beat ;
- (e) he shall report to the officer in charge of such police station the arrival of suspicious characters in the neighbourhood ;
- (f) he shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

**35. Procedure on arrest by village or road-policeman.**

Whenever a village-policeman or road-policeman arrests any person, he shall take him as soon as possible to the police-station within the jurisdiction of which his village or beat is situate.

**36. Dismissal of village or road-policeman.**

The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

Where any village-policeman is guilty of neglect of duty or other misconduct, the person authorized to nominate to his office may report him for dismissal to the Magistrate of the district ; and such Magistrate shall dismiss him accordingly, unless the Magistrate has reason to think that such dismissal would be improper.

### 37. Acts punishable.

Every village-policeman and road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,

or withdrawing from the duties of his office without permission and without having given at least two months' notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 29, 32 and 33 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

#### Penalty.

shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months, or to both.

### 38. Fines to be credited to such fund as Government appoints.

All fines levied under this Act on village-policemen or road-policemen shall be credited to such fund as the <sup>a</sup>[State Government] from time to time appoints.

## CHAPTER V SUBSIDIARY RULES

### 39. Power to make rules.

The <sup>a</sup>[State Government] may, from time to time, <sup>b</sup>[\* \* \*] make rules consistent with this Act as to—

- (a) the discipline and remuneration of the village and road-police and the regulation of their number, location and duties;
- (b) the disposal of unclaimed property under Act No. 5 of 1861 (*for the regulation of police*), sections 25, 26 and 27,
- (c) public health and conservancy at fairs and other large public assemblies, and the maintenance of a proper watch and ward at such fairs and assemblies;
- (d) imposing <sup>b</sup>[\* \* \*] taxes for those purposes only;

<sup>c</sup>[(e) the keeping and custody of civil, criminal and revenue records.]

<sup>d</sup>[\* \* \* \* \*]

[a] The words "with the previous sanction of the Governor-General in Council" were omitted by the U. P. Assimilation of Powers Act (XIV of 1878), S. 5. [b] The words "with the previous sanction of the Governor-General in Council" were omitted by A. O., 1937 [1-4-1937]. [c] Substituted for the original clause (e). [d] Clause (f) was omitted by A. O. 1937, clause (g) was omitted by the Oudh Rent Act, 1886, Amendment Act, 1901 (U. P. IV of 1901). The proviso was omitted by A. O. 1937 [1-4-1937].

### 40. Publication of rules.

All rules made by the <sup>a</sup>[State Government] under section 39, and all rules made by the <sup>b</sup>[High Court] under section 27, shall be published in the <sup>a</sup>[Official Gazette], and shall thereupon have the force of law.

[a] Substituted for "Chief Court", by A. L. O., 1950 [26-1-1950].

### 41. Continuance of prior rules as to matters for which rules may be made under the Act. [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*]

**42. Penalty for breach of rules.**

Whoever breaks any rule made or continued under this Act, not being a rule made by the <sup>a</sup>[High Court], shall, on conviction before a Magistrate, be punishable with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to six months, or with both.

[a] *Substituted* for "Chief Court", by A. L. O., 1950 [28-1-1950].

**CHAPTER VI****MISCELLANEOUS***Honorary Civil Jurisdiction*

**43.** Power to invest taluqdars with civil jurisdiction. [*Repealed by the Oudh Civil Courts Act, 1879 (XIII of 1879).*]

*Honorary police-officers***44. Honorary police-officers.**

The <sup>a</sup>[State Government] may, from time to time, confer on any person whom <sup>a</sup>[it] thinks fit any power which may be exercised by a police-officer under any Act for the time being in force, and withdraw any power so conferred.

[a] *Substituted* for "he" by A. O., 1937 [1-4-1937].

*Creation and alteration of districts and sub-divisions*

**45.** Power to create new districts. Power to form sub-divisions of districts. [*Repealed by the United Provinces Act, 1890 (XX of 1890), S. 35.*]

*THE FIRST SCHEDULE.* — [*Repealed by the Repealing Act, 1938 (I of 1938), S. 2 and Sch.*]

**THE SECOND SCHEDULE**

[*As amended*]

(*See* section 3)

**PART 1.—BENGAL REGULATIONS**

Number and year	Subject	Modifications
XXIII of 1803	Embezzlement by Native Officers.	<p>In section 1 and in section 2, clause <i>First</i>, before "sezawals," insert "tahsildars".</p> <p>In section 2, after the first clause, insert "<i>Second.</i> —The responsibility of the sureties of tahsildars extends to the several cases provided for in this Regulation."</p> <p>In section 3, for "Dewanny Adawlut of the Zillah, the Judge of which Court shall detain him," read "District where he shall be detained;" for "real or personal," read "movable or immovable;" and omit the words and figures "and the rules in Regulation XXVIII, 1803, regarding suits so carried on by the Collectors are to be held applicable to it."</p>

Number and year	Subject	Modifications
		<i>Omit</i> section 8.
X of 1804	Punishment by Courts-martial of certain State offences.	<i>Omit</i> section 1. In section 2, <i>for</i> "the British territories subject to the Government of the Presidency of Fort William" <i>read</i> "the territories under the administration of the Chief Commissioner of Oudh". In section 3, <i>for</i> "real and personal" <i>read</i> "movable or immovable".
XI of 1806	Assistance to troops and travellers passing through districts.	<i>Omit</i> sections 1, 7, 9, to 20(both inclusive), and so much of the rest of the Regulation as authorizes Collectors and their Native officers, or Magistrates and their police-officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops or the progress of travellers. <i>For</i> "Collectors of Revenue" and "Collector" <i>read</i> "Deputy Commissioner" throughout the Regulation. In sections 2 and 3, <i>for</i> "the Company's territories" <i>read</i> "Oudh". In section 2, <i>omit</i> the last sentence. In section 4, clause <i>Third</i> , <i>for</i> "Central Government" <i>read</i> "State Government". In section 5, <i>omit</i> "the Company's;" In section 6, <i>for</i> "Magistrate" <i>read</i> "Deputy Commissioner," and <i>for</i> "on the part of the Collector" <i>read</i> "by the Deputy Commissioner". In section 8, <i>for</i> "the Company's provinces" <i>read</i> "Oudh".
III of 1818	State Prisoners	In section 1, <i>omit</i> "situated within the territories dependent on the Presidency of Fort William," and from "which are to take effect" to the end of the section. In section 2, clause <i>Third</i> , <i>omit</i> "within the territories subject to the Presidency of Fort William". In section 4, <i>omit</i> clause <i>First</i> . In the same section, clause <i>Second</i> , <i>for</i> "Zillah or City Magistrate" <i>read</i> "Deputy Commissioner," and <i>for</i> "Judge of Circuit" <i>read</i> "Commissioner of Division". In section 9, <i>for</i> "to the Provincial Court of Appeal and Circuit and to the Sudder Dewanny Adawlut and Nizamut Adawlut" <i>read</i> "and to the Judicial Commissioner".
		<i>Omit</i> section 10.
XI of 1822	Non-liability of Government for errors of a Court of Justice	<i>Omit</i> the whole except section 38.
VI of 1825	Supply of troops on the march	In the preamble, <i>omit</i> the last twenty words. In section 2, <i>omit</i> "in pursuance of section III, Regulation XI, 1806," and <i>omit</i> "sicca". In section 4, <i>for</i> "Board of Revenue in whose jurisdiction the district may be situate" and "Board" <i>read</i> "Commissioner". In section 5, <i>omit</i> "on the stamped paper prescribed for other appeals to the Revenue Boards" and <i>for</i> "the proper Board" and "the Board" <i>read</i> "the Commissioner".

Number and year	Subject	Modifications
XI of 1825	Alluvion and Diluvion	<p><i>Omit</i> section 1.</p> <p>In section 3, <i>omit</i> "either" and "or the sea".</p> <p>In section 4, clause <i>First</i>, <i>omit</i> "whether" and "or of the sea," and <i>for</i> "the provisions of Regulation II, 1819, or of any other Regulation in force," <i>read</i> "any law in force for the time being;" clause <i>Third</i>, <i>omit</i> "or in the sea" and "or sea;" clause <i>Fifth</i>, <i>omit</i> "or the sea".</p> <p>In section 5, <i>for</i> "Zillah and City Magistrates" <i>read</i> "Deputy Commissioners".</p>

## PART II.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL

XX of 1856	Chaukidars	<p>In the preamble, <i>after</i> "Bengal" <i>add</i> "and the territories under the administration of the Chief Commissioner of Oudh".</p> <p><i>Omit</i> the words "of circuit" wherever they occur <i>after</i> "Commissioner".</p>
XIII of 1857	Opium	<p><i>Omit</i> section 40.</p> <p>In the title, <i>after</i> "the Presidency of Fort William in Bengal," <i>read</i> "and the territories under the administration of the Chief Commissioner of Oudh".</p> <p>In section 3, <i>omit</i> "being covenanted servants of the Company".</p>
XXII of 1871	Chaukidars	<p>In section 1, <i>after</i> "Presidency" <i>insert</i> "or territories".</p> <p>In section 3, <i>omit</i> the words "of circuit".</p> <p><i>Omit</i> section 6.</p>









# A. I. R. Commentaries Judicially Noticed.

## CONSTITUTION OF INDIA.

• A. I. R. 1961 Manipur 1 (4) (C. 1 Pr. 11)—*Tirumalpad J. C.*—"What is prohibited (in Art. 28 (1)) is begar and other similar forms of forced labour. The A. I. R. Commentaries on the Constitution of India at page 685 define 'begar' as a system under which persons are pressed to carry burdens for individuals or public or to perform other forms of menial service under compulsion".

A. I. R. 1961 M. P. 216 (219) (C. 70 Pr. 11)—*Shrivastava J.*—"In this connection, we may refer to the following passage from the Constitution of India by Chitaley (Vol. 3), Art. 254, Note 17 (d) Pt. 5: . . . . ."

(S) A. I. R. 1956 All. 341 (345) (C. 126 Pr. 33) (DB). — *Desai J.* — "Shri Jagdish Sahai could not cite any authority in support of his contention that the right given to the Court to draw an adverse inference is equal to compelling the accused to be a witness against himself. We notice that Chitaley in his Commentary on Constitution, Vol. I, pp. 497-498, does not see any conflict between the provisions of Art. 20 (8) and those of S. 342, Cr. P. C."

(S) A. I. R. 1956 J. & K. 1 (10) (C. 1 Pr. 34) (F. B.). — *Kilam J.* — "The learned author Chitaley in his luminous commentary on the Constitution has, after discussing almost the whole case law on the subject, enunciated some principles which I might give more or less in his own language. According to the learned author . . ." (Points from Note 8 (g) to Art. 21, p. 533 quoted.)

A. I. R. 1956 Mad. 541 (560) (C. 172 Pr. 49) (D. B.). — *Ramaswami J.* — "For a lucid and exhaustive discussion of the scope of Arts. 25 and 26 see the Encyclopaedia A. I. R. Commentaries on the Constitution of India, Vol. I, pp. 642-669."

## CIVIL PROCEDURE CODE, 1908.

A. I. R. 1953 S. C. 23 (27) (C. 7) — [Touching the revisional jurisdiction of the High Court set out in S. 115, Civil P. C.] "A large number of cases have been collected in Edn. 4 of Chitaley & Rao's Code of Civil Procedure (Vol. I) which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section."

I. L. R. (1964) 1 Ker. 320 (322) — *Madhavan Nair J.* — "The A. I. R. Commentaries on the Code of Civil Procedure in Note No. 4 to O. 84, R. 7 put the position succinctly thus . . . . ."

('63) 1963 Current Law Journal 291 (293)—*Indler Dev Dua J.*—"It would not be out of place here to state that there is a long string of decided cases in which civil courts have been held to possess inherent power of remand preserved by virtue of S. 151, Code of Civil Procedure. They are exhaustively digested in the commentaries of Civil Procedure Code by Chitaley under S. 151 and O. 41, R. 28 . . . . ."

A. I. R. 1963 Rajasthan 4 (5) (C. 3 Pr. 3) — *Jagat Narayan J.* — "There is conflict of opinion on the question whether an appeal lies against an order staying or refusing to stay an execution proceeding. The different views have been classified as follows by Chitaley in Note 44 to S. 47, Code of Civil Procedure: ". . . . ."

A. I. R. 1963 Punjab 9 (14) (C. 3 Pr. 12) (F. B.). — *D. K. Mahajan J.* — "It will, therefore, be obvious that the decision on the vires of the Act by Chopra J. was merely obiter and, therefore, it cannot operate as res judicata. See in this connection . . . . . page 800 of Chitaley's Civil Procedure Code, Vol. I, where a large number of authorities are cited . . . . ."

A. I. R. 1963 Kerala 16 (17) (C. 7 Pr. 5) — *M. S. Menon C. J.* — "The question as to whether an attachment before judgment comes within the scope and ambit of the rule (R. 57 of O. 21) has been the subject of controversy among the High Courts in this country. Chitaley sums up the controversy as follows: . . . . . (C. P. C., 6th Edition, Vol. 3, page 8044)".

**A. I. R. 1963 Kerala 236 (238) (C. 56 Pr. 5) — *M. Madhavan Nair J.* —** "The effect of Rule 60 (of O. 21) is stated in the A. I. R. Commentaries on the Code of Civil Procedure, correctly in my opinion, thus: . . . . ."

**A. I. R. 1962 Kerala 24 (25) (C. 15 Pr. 2) — *M. Madhavan Nair J.* —** "The matter will be placed before the Rule Committee to consider the desirability of retaining Explanation (to O. 32, R. 1) in our C. P. C. The Commentary of Chitaley and Rao on the Code of Civil Procedure, 6th (1957) Edition, page 8712 point 3 and the several cases noted as authorities therefor indicate that the view elsewhere is that . . . . ."

#### **COURT-FEES ACT, 1870 & SUITS VALUATION ACT, 1887.**

**(S) A. I. R. 1956 Madhya Bharat 132 (132) (C. 60 Pr. 2) (DB). — *Chaturvedi J.* —** "There is a great divergence of opinion on this point and the following account at page 224 of Chitaley's Commentaries on the Court-fees Act (1949 Edition) succinctly summarises the conflict of opinions on this point."

**A. I. R. 1956 Madras 593 (595) (C. 187 Pr. 8) — *Ramaswami J.* —** "The permutations and combinations which arise in regard to the procedure to be followed has been comprehensively and accurately summarised in the well-known A. I. R. Commentaries on the Court-fees Act and Suits Valuation Act (2nd Edn.) at page 871 as follows:— " [Quoted and relied upon]

#### **CRIMINAL PROCEDURE CODE, 1898.**

**1962 (1) Cr. L. J. 96 (98) (C. 39 Pr. 13) — *T. N. R. Tirumalpad J. C.* —** "This is the view which I find has been accepted as correct in the A. I. R. Commentaries to the Code of Criminal Procedure at Pages 880 and 881. It is seen from the said Commentaries that there is a conflict of decisions on the question . . . . . The Commentators are of the opinion that the view expressed in the Calcutta case is not the correct view. I certainly agree with the A. I. R. Commentaries on this point."

**A. I. R. 1959 Mad. 544 (C. 175 Pr. 12) — *Ramaswami J.* —** [After discussing the point it is stated thus:] "(see exhaustive and analytical discussion in A. I. R. Commentary of the Criminal Procedure Code, Fifth Edition, page 268 and foli. . . . . )"

**A. I. R. 1958 All. 439 (442) (C. 109 Pr. 14) (DB) — *James J.* —** "I would also refer to the opinion of the learned authors of the A. I. R. Commentary on the Code of Criminal Procedure, Vol. IV, 5th Edn., appended under S. 540: . . . . ."

#### **LIMITATION ACT, 1908.**

**A. I. R. 1963 Punj. 457 (459) (C. 127 Pr. 7) — *Grover J.* —** "As stated in Chitaley's Limitation Act, (8rd Edition), Volume 1 Page 524, the words 'Stayed by an injunction or order' have reference to an order of a court and not to a disability to sue or to apply arising from other causes."

**A. I. R. 1961 Pat. 134 (137) (C. 35 Pr. 18) — *Raj Kishore Prasad J.* —** "The question under consideration has been thoroughly and clearly dealt with in A. I. R. Commentaries on the Indian Limitation Act, 3rd Edition, Vol. I, Note 11, page 595. Note 18, pages 601.604 and Note 32 page 638."

**A. I. R. 1960 Kerala 306 (308) (C. 144 Pr. 17) — *M. S. Menon and T. K. Joseph JJ.* —** "As pointed out by Chitaley: 'Where no time is fixed for delivery, if the correspondence between the parties shows that the matter was being enquired into and that there was no refusal to deliver up to well within a year of the suit, this article (Art. 31) cannot be pleaded as a bar . . . . . ' (Limitation Act, Vol. 2, Page 1137)".

**A. I. R. 1959 Mad. 26 (27, 28) (C. 6 Pr. 10) — *Ramaswami J.* —** "This conflict of opinion has been settled by a Bench decision of this Court in *Kampanna Gowder v. Ponnuthayee*, 1955.2 Mad. L.J. (N. B. C.) 62=(A. I. R. 1956 Mad. 198). . . . In this connection it is interesting to note that in the A. I. R. Commentaries on the Limitation Act, the view expressed in this Bench decision is submitted to be the correct view (Vol. I page 568)."

## A. I. R. COMMENTARIES JUDICIALLY NOTICED

### REGISTRATION ACT, 1908.

A. I. R. 1960 Madhya Pradesh 3 (C. 2 Pr. 8)—*Dixit J.* — "The principle laid down in I. L. R. 4 Bom. 136 has been followed in many cases which have been noted in Chitale's Registration Act (Second Edition) at page 367. . . ."

A. I. R. 1960 Mad. 244 (C. 77 Pr. 9)—*Ramaswami J.* — "It is interesting in this connection to note that the A. I. R. Commentaries on the Registration Act (Second Edition) at pages 526 to 530, after an elaborate discussion of the law and the principles of S. 77 of the Registration Act, mention at p. 530 a view expressed by Abdur Rahman J. is correct."

### TRANSFER OF PROPERTY ACT, 1882.

A. I. R. 1964 Punj. 210 (211) (C. 52 Pr. 4) — *S. S. Dulat Atiq. Q. J. D. K. Mahajan J.* — "It is significant that the provisions of this section (S. 111, Act) have never been applied as a rule of equity, justice or good conscience by the High Courts in the territories to which this provision is not made applicable S. 1 of the T. P. Act, whereas a number of cases will be found at page 178, of Chitale's Transfer of Property Act, Vol. I, where principles underlying the provisions of the Transfer of Property Act have been so applied . . . ."

A. I. R. 1961 Mad. 28 (30) (C. 7 Pr. 7)—*Ramaswami J.* — "In this the learned District Munsiff has pertinently pointed out the implications of the decision in *Gopal Chandra Das v. Harendra Nath Datta*, 68 Ind. Cas. 483 (Cal.) . . . . This decision has been cited with approval in the well-known commentaries on the Transfer of Property Act by Chitale and Annaji Rao, Third Edition (1960) page 1861".

A. I. R. 1957 Jammu and Kashmir 16 (C. 13 Pr. 2) — *Shahmiri J.* — "In this connexion reference may also be invited to Note 9 under S. 114 of Chitale's Transfer of Property Act, 3rd Edition at page 1898 which reads as follows :—. . . ."

## A. I. R. MANUAL (2ND EDN.) JUDICIALLY NOTICED

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P. N. RAMASWAMI J. : — "A person who is in occupation of grazing land is its occupier within the meaning of this section, (S. 10 of the Cattle Trespass Act, 1871) and he is entitled to seize cattle within the meaning of this section, and he is entitled to seize cattle trespassing on such land and doing damage thereon. (For an exhaustive citation of the relevant cases see the most welcome 2nd (1960) Edn. of the A. I. R. Manual Vol. I referring to A. I. R. 1947 Pat. 172=47 Cri. L. J. 986 ; A. I. R. 1943 Sind 152 = 44 Cri. L. J. 761 ; A. I. R. 1916 Lah. 281 = 17 Cri. L. J. 63 ; A. I. R. 1919 Cal. 93=20 Cri. L. J. 398."

—A. I. R. 1960 Mad. 331 (332)=1960 Ori. L. J. 982 (983)

—See also A. I. R. 1960 Mad. 443 (446) = 1960 Ori. L. J. 1340 (1344) [Vol. 4 of the A. I. R. Manual (2nd Edn.) referred to.]